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1st Session

SENATE

REPORT
104–167

MARITIME REFORM AND SECURITY ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1139

NOVEMBER 2, 1995.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

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Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1139]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1139) to amend the Merchant Marine Act, 1936, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 1139 is to establish a program, known as the Maritime Security Fleet Program (MSFP), that would assure the continued presence of an active, privately owned, U.S.-flag and U.S.-crewed merchant shipping fleet to meet national and foreign commerce needs and to provide sustainment sealift capability in time of war or national emergency.

To accomplish the goals of ensuring the availability of a U.S. merchant fleet for wartime or national emergencies and in order to retain a pool of qualified mariners to serve on these vessels, the Committee recommends a bill, S. 1139, that would establish the MSFP. The bill, as reported, would phase out the existing operating-differential subsidy (ODS) program, would remove operating restrictions on participants in the MSFP and would provide reduced payments to vessel operators who agree to make their vessels and associated intermodal assets available to the Secretary of Defense upon request. Funding in the amount of $100 million per year for payments to vessel operators would be authorized. Each ship which participates in the program would receive $2.3 million per year for the first year and $2.1 million per year for the remaining nine years of the program. When fully operational, the program would result in the retention of up to 50 U.S.-flag vessels. Absent this

program, U.S.-flag vessel owners would be forced to shift their operations to foreign flags of convenience with foreign crews in order to be internationally competitive.

The current ODS program makes a payment based on the differential between U.S. crew and vessel costs and the costs of operating a vessel under a foreign flag. This payment scheme provides little incentive for U.S.-flag vessel operators to reduce costs or to seek operational efficiencies. The Maritime Security Fleet Program (MSFP) under S. 1139 would pay a flat amount per year per vessel. These payments would be up to 50 percent less per vessel than those under the existing program and would therefore create incentives for operators to constrain their operating costs. The bill, as reported, also recognizes the operating restrictions that have accompanied the ODS program have restricted ODS participants from utilizing their fleets in the most efficient and internationally responsive manner, contributing to the increased costs of operating vessels in the ODS program. The bill, as reported, eliminates numerous operating restrictions on MSFP contractors in an effort to increase the competitiveness of U.S.-flag vessels in the international trade.

S. 1139, as reported, also would expand the existing obligation of vessel owners to provide sealift assistance to the Department of Defense (DOD) in time of national need. Upon a request by the DOD, vessel owners would be required to make their vessels, their vessels' capacity, and their intermodal equipment, terminal facilities and management services available for sealift operations. Requiring U.S.-flag vessel operators to supply intermodal assets will ensure that defense mobilization plans provide a coordinated approach to our nation's transportation logistics needs.

BACKGROUND AND NEEDS

Following World War II, the United States had the largest commercial, privately owned merchant shipping fleet in the world. Almost half of the world's commercial fleet sailed under the American flag. This, in part, was reflective of the need for the United States to build up a merchant fleet to respond to heightened sealift requirements. Today, the U.S. merchant marine is in a state of crisis. While the United States remains the world's largest trading nation, our commercial fleet now ranks sixteenth in size in the world. Other foreign nations, such as Great Britain, Germany, and Japan, have also seen major declines in merchant fleet size. This is reflective of the trend away from regulation under national law and toward regulation under a flag of convenience. For instance, a vessel operating under the registry of Liberia, the Marshall Islands, or Vanuatu operates with minimal to non-existent tax liability and lesser insurance cost, has to comply with less stringent interpretation of international safety standards, and may operate with low cost seamen from countries such as Bangladesh, Pakistan, or the Philippines. As the number of ships in the U.S.-flag fleet declines, so does the number of civilian seafarers. Without remedial action, there simply will be no U.S. fleet to conduct foreign commerce, and the United States may have difficulty manning our Ready Reserve Fleet (RRF) and will have to rely on foreign-flag shipping for all

imports and exports and for the sustainment of future military operations.

During Operations Desert Shield and Desert Storm in the Persian Gulf War, the privately owned U.S.-flag fleet played a significant role in sealift operations. Approximately 32 percent of the cargo for those operations was shipped on container and chartered U.S.-flag ships, and 47 percent was shipped on government-controlled U.S.-flag ships. All of the U.S.-flag ships used during sealift operations were crewed by trained American merchant mariners. The Persian Gulf War thus demonstrated the continuing, modern day importance of maintaining the merchant fleet to meet our national security sealift needs. Since the Persian Gulf War, the Department of Transportation has mobilized RRF vessels manned by U.S. mariners for operations in Somalia, Haiti, and Bosnia.

Military sealift has two components: surge and sustainment. Surge sealift involves the mobilization of ships for the initial 30-day rapid deployment of unit equipment and military personnel for an overseas operation. Sustainment sealift refers to the requirements imposed on the merchant fleet to ship cargo in order to supply and resupply our forces beyond the first 30 days of an overseas military operation.

Surge sealift requirements are usually met through the use of Government owned prepositioned and fast sealift vessels and through the activation of specific vessels in the RRF. Government owned vessels available for immediate deployment provide assured transportation of surge equipment. Fast sealift vessels are fully manned by civilian mariners, 365 days a year, and are strategically deployed in order to respond rapidly to a variety of crises. High priority RRF vessels are outported in the United States near deployment load centers and have, at most, 10 assigned crew members during periods when such ships are not activated in order to maintain the vessel for activation. In order to activate the RRF, a substantial number of mariners must be employed from the existing U.S.-flag vessels. Labor practices on merchant vessels are somewhat different from those in other industries, mandating continuous seven days a week employment for lengthy periods of six to eight months, but permitting the balance of the year to be spent ashore. This labor pattern, common to seagoing labor activities, ensures that the United States has a labor pool of trained mariners that may be utilized to man the RRF. For example, over 3,000 civilian mariners were required to meet mobilization requirements during Operations Desert Shield and Desert Storm.

Since 1965, the number of jobs on privately-owned, oceangoing U.S.-flag ships of 1,000 gross tons and over has dropped from 50,986 to 8,603, as of January 1, 1995. Of these, 3,163 were licensed officers and 5,440 were unlicensed seamen. In large part, the reductions in personnel can be traced to vessel efficiencies and modernization. U.S.-flag vessels of the 1950's were smaller vessels, crewed by complements of well over 40 merchant mariners; but modern vessels are much larger and crewed by complements of just over 20 merchant mariners. A recent analysis by the U.S. Transportation Command concluded that in the absence of a MSFP, the U.S. mariner job base would be barely adequate to crew surge sealift vessels, with the RRF being at the highest risk.

Sustainment sealift requirements can be met more efficiently and less expensively through the use of available civilian merchant vessels. It would cost the Department of Defense (DOD) several times the cost of the MSFP to build and maintain a laid up sustainment sealift fleet. For instance, the DOD currently is building large cargo ships to supplement our nation's surge sealift capacity. Five of these vessels would cost more than the 50-ship Maritime Security Fleet. Even then, without an active U.S. commercial fleet, there would be an insufficient pool of U.S. mariners to operate such a fleet when it was needed. Relying on foreign-flag commercial vessels to meet the United States' sustainment sealift needs would leave the nation's ability to support significant military operations in the hands of foreign interests. Therefore, the most effective and efficient means of meeting the nation's sustainment sealift requirements is through an active U.S.-flag commercial fleet manned by U.S. citizen mariners.

While mariner shortages are most problematic for a successful surge sealift effort, the success of the sustainment sealift effort is most dependent on the efficient movement of goods including ammunition, food, and medical supplies in containers, a technology pioneered by U.S.-flag shipping companies. The intermodal nature of U.S. carriers makes this type of logistical support readily achievable through the use of their commercial land/water transportation systems. A key feature of S. 1139 is that vessel operators would be required to make land-based as well as water transportation systems available to the DOD.

In addition to the manning and operational considerations that underlie the need for the MSFP, there are concerns related to the size and financial soundness of the merchant fleet. In 1948, there were 716 vessels under the U.S. flag. Less than 150 privately owned vessels are currently in U.S.-foreign commerce and in the foreign-to-foreign trades. While the number of vessels under the U.S. flag and the number of jobs on those vessels have decreased, U.S.-flag carriers have become more efficient over time and now move more cargo than ever before. For example, in 1950, it took 681 ships to move 21.5 million tons of cargo. In 1992, it took only 189 ships to move 24.6 million tons of cargo. Regardless of how efficient U.S.-flag carriers become, in order to compete internationally U.S. shipowners must have capital costs, operating costs, and tax liabilities that compare favorably with, or are at least equal to, those of their foreign-flag competitors.

Unfortunately, complying with federal laws results in higher operating costs for U.S.-flag carriers. For instance, federal law requires that all licensed and unlicensed seamen on U.S.-flag vessels must be U.S. citizens or permanent resident aliens. Ships registered in Liberia, Panama, or the Marshall Islands have no such requirement and employ seamen from countries such as Bangladesh or the Philippines, who make as little as $350 per month and are subject to virtually no restrictions on working hours. In addition, tax laws and U.S. Coast Guard requirements are substantially more onerous for U.S.-flag vessels than for those operated under foreign flags and registration.

To offset the higher cost of operating under the U.S. flag, the Merchant Marine Act, 1936 (1936 Act) created the ODS program,

through which payments are made to U.S. carriers on specified trade routes. These ODS contracts begin to expire in 1995, and over 90 percent will have expired by 1998. Without the continued availability of a program to offset the higher costs of doing business under U.S. law, it is expected there will be little or no U.S.-flag container fleet by the year 2000. The potential absence of a U.S.-flag fleet also would jeopardize our trading interests, as U.S. importers and exporters would be completely dependent on foreign shipping interests.

The Committee therefore believes it is in the best interests of the United States to retain a fleet of vessels under the U.S. flag and to provide, as do many nations, adequate financial incentives to register vessels in their home country.

LEGISLATIVE HISTORY

Support for reform of the ODS program in order to provide such incentives has been ongoing for several years. Presidents Bush and Clinton both proposed maritime reform legislation to Congress, and bills passed the House of Representatives in each session of the 103rd Congress.

The Surface Transportation and Merchant Marine Subcommittee held a hearing on the proposed MSFP and the Title XI vessel loan guarantee program on July 26, 1995. At the hearing, the Subcommittee heard testimony supporting the MSFP from Administration representatives Vice Admiral Albert J. Herberger, U.S. Maritime Administrator, and General Robert L. Rutherford, Commander in Chief, U.S. Transportation Command; U.S.-flag vessel operator representatives Mr. John Clancey, Sea-Land Service, Inc., Mr. Timothy Rhein, American President Companies, and Mr. Erik Johnson, Waterman Steamship Corp. and Central Gulf Lines, Inc.; U.S. maritime labor representatives Mr. Michael Sacco, Seafarers International Union of North America, Mr. Michael McKay, American Maritime Officers, Captain Timothy Brown, International Organization of Masters, Mates and Pilots, and Mr. Joel Bem, Marine Engineers' Beneficial Association. All testified in favor of the MSFP. Additionally, the Subcommittee heard testimony from U.S. shipyard representatives Mr. Thomas P. Jones, Shipbuilders Council of America, and Mr. Thomas Bowler, American Shipbuilding Association, supporting Title XI vessel loan guarantee program reforms proposed by the House National Security Committee.

On August 9, 1995, S. 1139 was introduced by Senator Lott, with Senators Stevens, Hutchison, Snowe, Hollings, Inouye, Breaux, and Mikulski as cosponsors. On August 10, 1995, in open executive session, the Committee, without objection, ordered S. 1139 reported.

The bill modifies and incorporates provisions from several legislative proposals, including S. 1945, the Maritime Security and Trade Act, which was introduced at the Administration's request during the 103rd Congress; H.R. 4003, the Maritime Security and Competitiveness Act of 1994, which passed the House during the 103rd Congress; and two bills ordered reported by the House National Security Committee this year: H.R. 1347, the Maritime Administration Authorization Act of 1995, and H.R. 1350, the Maritime Security Act of 1995.

SUMMARY OF MAJOR PROVISIONS

S. 1139, as reported, would authorize the MSFP and would authorize the Secretary of Transportation (the Secretary) to enter into operating agreements for fiscal year 1996. These operating agreements would be effective only for a one-year period but would be renewable, subject to annual appropriations, through the end of 2005. The program would be authorized at $100 million per year. Annual payments under the bill would be $2.3 million per ship per year for the first year and $2.1 million per ship per year for the following nine years of the program. The Committee recognized the value in providing longer term contract authority between the U.S. government and the U.S. flag operators, but fiscal constraints precluded the enactment of multi-year contract authority as the Administration had originally proposed. S. 1139, as reported, also would expand the obligations of vessel operators who participate in the program by requiring them to make available a broad range of intermodal assets and not simply vessels. The bill, as reported, would allow vessel operators to reflag if Congress fails to appropriate the funds necessary to operate the program.

S. 1139, as reported, would terminate the ODS program and addresses concerns of nonsubsidized operators in the noncontiguous domestic trade about the participation of MSFP subsidized operators in that trade. The bill, as reported, would remove certain construction and operating restrictions on U.S. flag vessels to improve the competitiveness of these vessels in the international trade market. S. 1139, as reported, would reform the title XI vessel loan guarantee program to improve its effectiveness and establish a repair and maintenance pilot program to improve the readiness of the Ready Reserve Fleet. The bill, as reported, also would authorize minimal veterans benefits for certain merchant seamen who served around the end of World War II; grant certain reemployment rights for certain merchant seamen participating in certain national defense sealift programs; extend the war risk insurance program until June 30, 2000; make a minor amendment to the Merchant Ship Sales Act of 1946; and reduce the frequency of a required report.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 31, 1995.

Hon. LARRY PRESSLER,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1139, the Maritime Reform and Security Act of 1995.

Enacting S. 1139 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1139.

2. Bill title: Maritime Reform and Security Act of 1995.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on August 10, 1995.

4. Bill purpose: S. 1139 would amend Title VI of the Merchant Marine Act, 1936, which authorizes federal operating subsidies for U.S.-flag shipping companies. Section 101 of the bill would replace the existing operating differential subsidy (ODS) program currently administered by the Maritime Administration (MARAD) with a new program. Specifically, the section would establish the Maritime Security Fleet (MSF) within the Department of Transportation. Owners or operators of ships enrolled in the MSF would enter into annual operating agreements with MARAD making their vessels available to the government when needed for national security. In exchange, the agency would pay the ship owners or operators $2.1 million ($2.3 million for 1996) per ship, subject to appropriation of the necessary amounts. The bill would authorize the Secretary of Transportation to enter into one-year agreements in 1996; the contracts could then be renewed each year through 2005 subject to the availability of appropriations. All eligible carriers would be able to sign the one-year agreements during 1996 but would not receive the monthly payments for vessels covered by ODS contracts or Military Sealift Command (MSC) charters until these other payments ended. The bill would authorize the appropriation of $100 million for fiscal year 1996, and such sums as necessary up to $100 million per year for fiscal years 1997 through 2005.

Section 102 of the bill would prohibit the Secretary of Transportation from renewing or executing new ODS contracts once the legislation is enacted. Carriers with active contracts would continue to receive subsidy payments until those agreements expire, unless the carriers choose to terminate them at an earlier date.

Title III of S. 1139 would establish a system for determining risk categories and guarantee fees to be assigned by the Secretary when guaranteeing loans under Title XI of the 1936 act. This title also would direct the Secretary to conduct a pilot program to procure maintenance and repair services for nine Ready Reserve Force (RRF) vessels through long-term contracts.

Section 401 of the bill would extend the qualifying period for determining the active military status of certain merchant mariners and would entitle qualifying seamen to receive burial rights and benefits from the Department of Veterans Affairs (VA). This section would direct the Secretary of Transportation to reimburse the VA for the additional benefit costs. Finally, the Secretary of Transportation would collect a $30 processing fee from each mariner applying for benefits.

S. 1139 also would make technical amendments to various statutes that govern MARAD activities and extend the Secretary's authority to provide war risk insurance.

5. Estimated cost to the Federal Government: Under current MARAD policies, operating subsidies to U.S. shipping companies will terminate in fiscal year 2001, when the last existing ODS contract expires. No new contracts have been executed since 1981, and MARAD no longer extends existing agreements. CBO projects that ODS outlays will fall from $167 million in 1996 to less than $7 million by 2000. CBO estimates that, as a result of Title I of S. 1139, annual subsidy payments to shipping companies would total $209 million in each of fiscal years 1996 and 1997. Total subsidies would fall to $146 million in 1998, the first full year of payments under the new program, as more ODS contracts expire. From 2001 (when all ODS contracts will have expired) through 2005, annual subsidies would equal $100 million, the amount authorized for MSF payments.

In addition to the changes made by Title I, two other provisions of the bill would affect the federal budget: (1) The pilot program on RRF maintenance required by Title III, which would increase the 1996 authorization level by $30 million and discretionary outlays by $10 million in each of fiscal years 1996 through 1998, and (2) the changes in eligibility for merchant mariner benefits in Title IV, which would result in small changes in mandatory spending. The budgetary impacts of the legislation are summarized in the following table:

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998	1999	2000
SPENDING SUBJECT TO APPROPRIATIONS						
Spending under current law:						
Budget authority[1]	.....	.....	.....	.....	.....	.....
Estimated outlays	211	167	128	46	11	7
Proposed changes:						
Estimated authorization level	.....	76	84	100	100	100
Estimated outlays	.....	52	91	110	100	100
Spending under S. 1139:						
Estimated authorization level	.....	76	84	100	100	100
Estimated outlays	211	219	219	156	111	107
CHANGES IN DIRECT SPENDING						
Estimated budget authority	.....	(2)	(2)	(2)	(2)	(2)
Estimated outlays	.....	(b)	(b)	(2)	(2)	(2)

[1] Spending under current law is equal to CBO baseline estimates of outlays that will occur under existing contracts. Budget authority was provided for this purpose in the years that the contracts were signed; no new authority is shown under current law because CBO does not expect any new ODS agreements to be executed.
[2] Less than $500,000.

The costs of this bill fall within budget function 400.

6. Basis of estimate: *Spending Subject to Appropriations.*—For purposes of this estimate, CBO assumed that S. 1139 would be enacted in the first quarter of fiscal year 1996. The table shows the amounts that CBO estimates would be obligated each year for MSF subsidy payments, up to the $100 million annual cap specified by section 101. For fiscal year 1996, this amount is $46 million—considerably below the annual cap—because we expect that no MSF operating agreements would become effective until late in the year, based on the requirements of the legislation. Appropriations and

outlays would rise to $100 million annually by 1998, once all agreements have been signed and all enrolled vessels have begun receiving payments. (We estimate that fewer than 10 ships currently under other federal contracts will enter the MSF; most of these will begin receiving payments by 1998.) At that time, MSF appropriations will be sufficient to subsidize about 47 ships.

The fiscal year 1996 authorization level shown in the table also includes $30 million for the RRF program mandated by section 303. The estimated authorization for RRF maintenance contracts is based on information provided by MARAD maintenance contracts is based on information provided by MARAD, which manages the RRF through an agreement with the U.S. Navy. We estimate that this amount would be spent over three years, under maintenance agreements with nine U.S. shipyards, each covering one vessel. Some or all of this amount may be reimbursed by the Department of Defense from amounts appropriated to the National Defense Sealift Fund for RRF operation and maintenance. The $30 million estimated cost of the RRF maintenance pilot program is about the same as MARAD currently spends for these purposes (a little over $1 million per ship per year), but funding for this purpose is currently provided on an annual basis. MARAD has no existing authority to enter into multiyear maintenance contracts.

Direct Spending.—Title IV would result in small changes in direct spending. This title would require the federal government to pay certain mariners veterans benefits of less than $300 each. Offsetting this cost would be collections of $30 from each mariner who applies to the Coast Guard for the certification needed to obtain such benefits. Because the number of mariners and the average cost of providing benefits to eligible candidates are both so small, CBO estimates that the net impact of this title would be less than $500,000 per year, beginning in 1996.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting S. 1139 would affect spending, and therefore, pay-as-you-go procedures would apply to the bill. We estimate, however, that new direct spending would be less than $500,000 per year.

[By fiscal years, in millions of dollars]

	1996	1997	1998
Change in outlays	0	0	0
Change in receipts	(1)	(1)	(1)

[1] Not applicable.

8. Estimated cost to State and local governments: None.

9. Estimate comparison: None.

10. Previous CBO estimate: CBO has prepared cost estimates for two bills ordered reported by the House Committee on National Security with provisions similar to those in S. 1139. On July 19, 1995, CBO prepared an estimate for H.R. 1350, the Maritime Security Act of 1995, as ordered reported on May 24, 1995. The estimate for Titles I and II of S. 1139 is identical to the estimate for H.R. 1350. On September 7, 1995, CBO prepared an estimate for H.R. 1347, the Maritime Administration Authorization Act for Fiscal Year

1996, as ordered reported on May 2, 1995. Our estimates for similar provisions contained in S. 1139 are identical to the estimates contained in our earlier submissions.

11. Estimate prepared by: Deborah Reis

12. Estimate approved by: Robert A. Sunshine for Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

S. 1139, as reported, would authorize appropriations for the MSFP and would make several changes to current law. While many sections of the reported bill would have minimal regulatory impact, the provisions of titles I and II, and sections 301 and 302, will affect substantially certain Department of Transportation regulatory programs, as noted below.

Title I would authorize the MSFP, a new maritime subsidy program to be administered by the Secretary; terminate the ODS program; and establish a mechanism for preserving competition in the noncontiguous domestic trade of the United States between subsidized and nonsubsidized U.S.-flag vessel operators. Title II would remove certain vessel construction and operating restrictions currently placed on subsidized U.S.-flag vessel operators.

The title I and title II provisions would affect approximately 20 U.S.-flag vessel operators employing approximately 15,000 workers, including merchant mariners and support personnel. The primary economic impact of these provisions would be the retention of up to 50 U.S.-flag vessels that would otherwise transfer to foreign flag and the continued direct employment of approximately 3,000 U.S. merchant mariners and indirect and induced employment of several thousand other U.S. workers through the MSFP. This economic impact would be manifested by retention of hundreds of millions of dollars in U.S. household earnings and foreign exchange. A January 1995 study by Nathan Associates, Inc. concluded that the benefit-cost ratio of federal support for the U.S. merchant marine is at least 1.15. The title I and title II provisions would result in a small increase in paperwork associated with the MSFP operating agreements that would be somewhat offset by a reduction in the requirements for the Secretary's approval of certain business actions by ODS contractors. The title I and title II provisions would have no impact on personal privacy.

Sections 301 and 302 would reform the Title XI vessel loan guarantee program to improve its effectiveness. These provisions would affect approximately 25 U.S. shipyards employing approximately 100,000 workers. The primary economic impact of these provisions would be the effective doubling of the amount of Title XI vessel loan guarantees which could be approved for a given level of appropriations. The Administration requested $48 million for FY 1996 for Title XI vessel loan guarantees, which under current law would guarantee up to $500 million in vessel loans. Sections 301 and 302 would increase this amount to $1 billion in vessel loan guarantees, a $500 million increase. Since each Title XI loan guarantee is limited to 87.5% of the total vessel loan, the net increase in economic

activity, as measured by total vessel loan values, resulting from these provisions would be approximately $570 million. The section 301 and 302 provisions would result in no increase in paperwork and would have no impact on personal privacy.

Section 402 would require the Secretary to prescribe regulations implementing, for merchant seamen who are employed in the activation and operation of a vessel used by the United States for a war, armed conflict, national emergency, or maritime mobilization need, reemployment rights which are substantially equivalent to those granted returning military reservists. The number of businesses and U.S. merchant mariners affected by this provision would depend upon the extent of future vessel mobilizations. For example, over 3,000 civilian mariners were required to meet mobilization requirements during Operations Desert Shield and Desert Storm. This provision would result in a minimal increase in paperwork and would have no impact on personal privacy.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 cites the short title for the reported bill as the "Maritime Reform and Security Act of 1995".

TITLE I—MARITIME SECURITY

Section 101. Maritime security program

This section would add a new subtitle B to title VI of the 1936 Act, consisting of new sections 651 through 655. The program established under new subtitle B would be entitled the "Maritime Security Fleet Program". Under this subtitle, the Secretary would be required to establish a fleet of active, militarily useful, privately-owned vessels to meet national defense and other security requirements and for the purpose of maintaining a United States presence in international commercial shipping. The vessels in this fleet would be those which are covered by an operating agreement.

New section 651(b) would establish the criteria that vessels must meet to be eligible to be covered by an operating agreement. To be eligible, the vessel must currently be operating in ocean common carriage within the meaning of the Shipping Act of 1984 (46 U.S. Code App. 1701 et seq.), must be a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units, or must be a lighter aboard ship (LASH) vessel with a barge capacity of at least 75 barges. In addition to these specific categories, the Secretary would be authorized to select additional vessel types that may be needed to meet specific national defense or military requirements.

New section 651(b) would also set certain vessel age limitations for participation in the new program. To be eligible, vessels must meet specified age requirements as of the date an operating agreement is first entered into, unless the Secretary, after consultation with the Secretary of Defense, determines that it is in the national interest to waive the age requirement. The age requirement is that a vessel, other than a LASH vessel, must be 15 years of age or less on the date an agreement is first entered into; LASH vessels must be 25 years of age or less on the date of first entry into an agree-

ment. Vessels that are not currently under the U.S.-flag would be eligible to be covered if they are less than 10 years of age when placed under the U.S. flag. An MSFP application can be filed with respect to a foreign-flag vessel, or a vessel still under construction, so that the applicant can know whether or not the vessel will receive an MSFP operating agreement for the vessel before documenting the vessel under U.S. flag.

New section 652 would establish the terms, payment levels, and limitations on MSFP operating agreements.

New section 652(a) would require participants in the MSFP to sign an operating agreement with the Secretary. Subject to the payment restrictions described in new section 652(g), the Secretary would be allowed to enter into operating agreements for vessels which continue to operate under an ODS contract or which are under charter to the DOD. However, the payment restrictions of new section 652(g) would prohibit contractors from receiving double payments as a result of ODS contracts or DOD charters.

New section 652(b) would require all participating vessels to be documented under U.S. law and operated in the foreign commerce of the United States. Participating vessels may not be operated exclusively in the domestic trade, but may be operated in the mixed foreign trade and domestic trade allowed under registry endorsement for the vessel issued under 46 U.S. Code 12105.

New section 652(c) would establish that operation of a vessel in the foreign commerce of the United States under an MSFP operating agreement is "without restriction." This phrase is intended to establish the inapplicability, under the MSFP, of restrictions which were imposed on vessels by the ODS program. Thus, under the new program, there is no regulation of foreign "trade routes" served by vessels participating in the MSFP. New section 652(c) would also establish that a contractor of a vessel included in an MSFP operating agreement shall not be subject to any requirement of sections 801, 808, 809, or 810 of the 1936 Act. Finally, new section 652(c) would also expressly establish that participation in the MSFP does not establish a basis for regulating a contractor pursuant to section 805 of the 1936 Act or any provision of Subtitle A of title VI of that Act.

New sections 652(d), (e), and (f) would establish payment rates and criteria for vessels participating in the MSFP. The basic rates of payment would be $2.3 million per ship per year for fiscal year 1996, and $2.1 million per ship per year for fiscal years 1997 through 2005. Because of budget limitations, the operating agreements would be one-year contracts, with a provision authorizing annual renewals for up to nine years. Each renewal would be subject to the availability of appropriations. The Secretary would be required to renew an operating agreement if sufficient funds were appropriated or otherwise made available to fund that operating agreement. The Secretary may not reduce those amounts except as provided for by section 652.

New section 652(e) would require an MSFP contractor to certify annually to the Secretary that the vessel was operated in the foreign trade, or in a mixed foreign and domestic trade as allowed under a registry endorsement, for at least 320 days during the pre-

vious year (including time spent being surveyed, inspected, drydocked, or repaired).

Under new section 652(g), an MSFP vessel would not be eligible to receive a payment under this program for any days which it is: (1) under charter, other than a charter allowed under section 653, to the United States Government or is subject to an existing ODS contract; (2) not operated in accordance with the operating agreement; or (3) more than 25 years of age, except that a LASH vessel more than 25 years of age may be eligible for MSFP payments if it: (A) is modernized after January 1, 1994; (B) is modernized before it is 25 years of age; and (C) is not more than 30 years of age.

New section 652(h) would establish a general rule that MSFP payments are not to be reduced due to carriage of military or civilian preference cargoes. New section 652(h) would establish, however, that no MSFP payments are to be made for any day that a vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b of the 1936 Act, and would require a pro rata reduction in payment for any day that the vessel operates below the 320-day limitation that is set forth in new section 652(e). Under new section 654 "bulk cargo" is defined as cargo carried in bulk without mark or count, the same definition as used in the Shipping Act of 1984. The Committee intends that, as under the Shipping Act, containerized cargo is not bulk cargo.

New section 652(i) would establish the order in which the Secretary shall award contracts for vessels based on 3 priorities. The first priority set forth in new section 652(i)(1) includes two types of vessels: (1) those that are owned by persons who are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S. Code App. 802)(section 2 citizens); and (2) those that are less than 10 years old and owned by persons who are eligible to own a U.S.-flag vessel (documentation citizens) if the person also operates or manages other U.S.-flag vessels for the Secretary of Defense or charters vessels to the Secretary of Defense. The number of vessels for which a person who is a section 2 citizen may be awarded an operating agreement under the first priority would be capped at the number of U.S.-flag vessels that the person operated in the foreign commerce of the United States (including allowed mixed domestic and foreign commerce) on May 17, 1995, plus the number of U.S.-flag vessels that the person had under charter to the Secretary of Defense on that date. The number of vessels for which a person who is a documentation citizen may be awarded an operating agreement would be limited to not more than five. For the purposes of these first priority limitations, a related party with respect to a person would be treated as the person.

Under this provision, if appropriated funds are available after awarding contracts for all eligible vessels covered under the first priority, then the Secretary would be able to award contracts under the second priority. The second priority would include the same two types of persons who are eligible under the first priority, but only with respect to vessels in excess of the cap for that person in the first priority. Under new section 652(i)(3), to the extent that appropriated funds would be available after awarding operating agreements for all eligible vessels covered under the first and second pri-

orities, the Secretary would be required to award operating agreements for vessels that are otherwise eligible.

New section 652(j) would describe the authority to transfer MSFP operating agreements to other eligible persons.

New section 652(k) would describe the termination of the Secretary's obligation to make payments to an MSFP contractor if the contractor fails to meet certain obligations.

New section 652(l) would describe the procedures for the consideration by the Secretary of an MSFP application and the effective date of MSFP operating agreements.

New section 652(m) would describe the procedure for the early termination of an MSFP operating agreement.

New section 652(n) would provide that if an operating agreement is not renewed within the first 60 days of the fiscal year, then each vessel covered by an operating agreement under this subtitle is released from any further obligation under the agreement, and the operator may transfer and register that vessel under a foreign registry deemed acceptable by the Secretary.

New section 652(o) would describe the process for the awarding of MSFP operating agreements. Provisions included in section 652(o) would require the Secretary, starting with the lowest priority, to make a proportional reduction in the number of operating agreements offered to each person who has submitted applications for operating agreements within a priority in the event that appropriated amounts are not sufficient for all eligible vessels within that priority. The new section 652(o) would also give a preference to U.S.-built vessels in the award of operating agreements.

New section 652(p) would require MSFP contractors to inform the Secretary of certain new vessel construction actions so that U.S. shipyards capable of constructing those vessels are notified of these actions.

New section 653 would describe the national security requirements placed on MSFP contractors. New section 653(a) would establish requirements for the Emergency Preparedness Agreement (EPA). The EPA would be entered into pursuant to the Emergency Preparedness Program established by the Secretary and approved by the Secretary of Defense. Upon a request by the Secretary of Defense during time of war or national emergency, an owner or operator of a vessel covered by an operating agreement would be required to make available commercial transportation resources. The Secretary of Transportation (in consultation with the Secretary of Defense) and a contractor may agree to additional or modifying terms appropriate to a particular contractor's circumstances. Thus, the bill, as reported, recognizes that, beyond a given common framework, agreements could vary somewhat among contractors.

The Secretary would be expected to negotiate and enter into an EPA with each contractor as promptly as practicable after that contractor has entered into an operating agreement.

New section 653(b) would define commercial transportation resources which must be made available upon a request by the Secretary of Defense to include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, and intermodal and management services, or any portion of the above categories that the Secretary may deem necessary.

A contractor would be required to make available vessels which are in the new program or an equivalent vessel capacity from the contractor's vessels, whether or not in the program. The contractor would also be required to make available certain land side assets and systems, such as terminals and management expertise. The Committee envisions that the actual EPA would not require a contractor to offer non-vessel resources which are disproportionately large when compared to the contractor's vessel commitment. A contractor could agree voluntarily, in an EPA, to make a disproportionately larger portion of its non-vessel assets available. However, the Committee notes that, if the government were to seek to include in the EPA provisions requiring contractors to pledge resources which are out of proportion to the number of vessels the government is prepared to support with payments, contractors may be discouraged from participating in the new MSFP.

The Committee also notes that the government's emerging "VISA" program (a program being developed under present law) does not ask for a disproportionate commitment of land side resources and the bill has been drafted in anticipation of reasonable program demands by the government of contractors. In addition, the bill specifies that the Secretary is, in administering the Emergency Preparedness Program, to seek to "minimize disruption of the contractor's service to commercial shippers" in determining how and when to actually activate an EPA.

Under the provision, a contractor's obligations under an EPA would be triggered by a request by the Secretary of Defense during time of war or national emergency. The Committee expects that the government will develop a procedure, through an identified process, to ensure that the decision to request resources is not made lightly but, instead, represents a considered and carefully coordinated decision.

New section 653(c) would specify that compensation to be provided to a contractor under an EPA shall be fair and reasonable, not less than the contractor's commercial market charges for like transportation (charges can be greater for additional and different services, as they are not "like", and shall include all the costs associated with provision and use of the contractor's commercial resources to meet emergency requirements (i.e., activation costs).

This section would also specify that the fair and reasonable compensation shall not reflect in any way payments under new section 652. Section 652 payments are made to compensate MSFP contractors for the higher costs of complying with U.S. law. Thus, the government would not be able to set low compensation for services rendered under new section 653 on the grounds that, combined with new section 652 payments, it is fair and reasonable. Thus, payment of fair and reasonable compensation under new section 653 would be in addition to new section 652 payments and determined independently, in accordance with the compensation criteria set forth in new section 653.

Under new section 653(d), an owner or operator who makes a vessel available to the Secretary of Defense under this section would be allowed to employ a foreign-flag vessel in the foreign commerce of the United States, including the carriage of preference cargo, as a replacement vessel for a vessel covered by an operating

agreement under this subtitle, in order to minimize disruption to commercial services.

New section 653(e) would require the Secretary to redeliver the vessel or other resources which were used during a war or national emergency in the same condition as when made available, less ordinary wear and tear. The Government would be required to compensate the contractor for necessary repairs or replacements. Except as provided in an EPA or otherwise provided by law, the government would not be liable for certain consequential damages arising from activation of commercial transportation resources and services.

New section 653(e) would further establish that when a vessel is covered by an agreement under this section, it is not subject to section 902 or 909 of the 1936 Act. The provision would also establish that an EPA supersedes any other agreements between the government and the contractor for vessel availability in time of war or national emergency. Thus, while a contractor is subject to an EPA, that agreement governs how and what the government may require of a contractor in terms of response to emergencies.

New section 654 would contain definitions applicable to Subtitle B.

New section 655 would authorize to be appropriated for operating agreements under this subtitle $100 million for fiscal year 1996 and such sums as may be necessary, but not to exceed $100 million, for each fiscal year thereafter through fiscal year 2005.

Section 102. Termination of operating-differential subsidy program

This section would amend the 1936 Act to generally provide for the phasing out of the current ODS program. Section 102(a) of the reported bill would amend section 605(b) of the 1936 Act to prohibit the payment of an ODS for the operation of a vessel that is more than 25 years of age, unless the Secretary determines, before enactment of this bill that it is in the public interest to grant such financial aid for the operation of such vessel.

Section 102(b) of the reported bill would create a new section 616 of the 1936 Act. The new section would prohibit any new ODS contracts after the new program is enacted and would remove the trade route and essential service restrictions on vessels that are subject to existing contracts once the new program is operating, and would allow for the voluntary termination of ODS contracts. An operator of a vessel included in an ODS operating agreement would be allowed to place that vessel under a foreign registry deemed acceptable by the Secretary if a comparable vessel is included in the agreement as a replacement.

Section 103. Noncontiguous domestic trades

In general, section 103 of the reported bill would impose certain limitations with respect to the ability of a contractor to receive MSFP payments while participating in the noncontiguous domestic trades. By definition, those trades consist solely of trade between a point in the 48 contiguous states and a point in Hawaii, Puerto Rico, or Alaska (other than points in Alaska north of the Arctic Circle).

This would be a new provision, governing the new MSFP. Section 805(a) of the 1936 Act (46 U.S. Code App. 1223) would not apply to an MSFP contractor unless that contractor is also receiving payments under the ODS program.

Section 103 of the reported bill would establish two different bases for participation in noncontiguous domestic trades by a contractor receiving MSFP payments. The rule set forth in subsection (a) would establish that an MSFP contractor or related party may not receive MSFP payments when participating in a noncontiguous domestic trade without first obtaining written permission of the Secretary, after specified findings are made by the Secretary, and after a specified type of hearing.

The other basis for an MSFP contractor's participation in noncontiguous domestic trades while receiving MSFP payments would not in any way be subject to such written permission, findings or hearing. Section 103 of the reported bill would authorize an MSFP contractor (receiving MSFP payments) to serve the noncontiguous domestic trades within the parameters established by sections 103(c) and (d) of the reported bill. Sections 103(c) and (d), respectively, of the reported bill would: (1) grandfather the level of service (as defined in section 103(h)(1)) of the reported bill provided by an MSFP contractor as of specified dates (allowing a contractor to continue to deploy that level of service), and (2) allow an MSFP contractor to increase its grandfathered service in proportion to growth in the economy of the applicable state or commonwealth. Section 103(e) of the reported bill would set forth procedures for the Secretary to promptly establish the precise extent of noncontiguous domestic trade service authorized by sections 103(c) and (d) of the reported bill. This prompt procedure would be appropriate, so that all concerned could know the precise level of statutorily authorized service by MSFP contractors in those trades under the relevant facts.

With respect to written permission authority, under section 103(a)(1) of the reported bill, no contractor or related party would receive MSFP payments while participating in a noncontiguous domestic trade except upon "written permission of the Secretary." Such written permission also would be required before an MSFP contractor may implement a material change in the number or frequency of sailings, the capacity offered, or the domestic ports called in such a trade. The Secretary would be authorized to grant such written permission unless the Secretary finds that: (A) existing service in the relevant trade is adequate; or (B) the service sought to be provided by the contractor or related party—(i) would result in unfair competition to any other person operating vessels in such noncontiguous domestic trade, or (ii) would be contrary to the objects and policy of this bill.

Section 103(a)(1) would differ from corresponding aspects of section 805(a) of the 1936 Act in that this provision would establish as a factor in the determination whether existing service in the trade is adequate and it would make the unfair competition issue relevant to all operators in the relevant trade, not only to those operating "exclusively" in domestic trades. Also, with respect to service or material changes in service subject to this paragraph, the Secretary would be authorized to grant the application for such

service in the absence of an affirmative finding by the Secretary that the proposed service would result in unfair competition under section 103(a)(1)(B)(i) of the reported bill, or be contrary to the objects and policy of the 1936 Act under 103(a)(1)(B)(ii) of the reported bill, or that existing service in the relevant trade is adequate. If the Secretary makes an affirmative finding with respect to any of those three tests, however, the Secretary would not be authorized to grant an application for a service subject to section 103(a)(1) of the reported bill. Section 103(a)(2) of the reported bill would establish procedures applicable to section 103(a)(1) of the reported bill.

With respect to grandfathered authority, section 103(b) of the reported bill would establish that section 103(a) of the reported bill shall not apply "in any way" to a contractor's provision of service in a noncontiguous domestic trade within the "level of service" provided by that contractor as of the date established by section 103(c) of the reported bill (grandfathered service) or to provision of service permitted by section 103(d) of the reported bill (growth in trade service). Section 103(c) of the reported bill would establish August 9, 1995, the date of the introduction of this legislation, as the grandfather date, except that with respect to tug and barge service to Alaska the date would be July 1, 1992.

The term "level of service" provided as of the grandfather date would have the meaning set forth in section 103(h)(1) of the reported bill.

For containership service, section 103(h)(1)(B) of the reported bill would establish that the level of service provided by a contractor in a noncontiguous domestic trade as of a date is the sum of two figures: 100 percent of the capacity of the vessels operated by or for the contractor and participating solely in that trade; and 75 percent of the capacity of the vessels operated by or for the contractor and participating in both that trade and another trade. In each case capacity would be determined by taking the relevant vessels' container capacity and sailing frequency as of the grandfather date. Also, capacity would be the service's physical capacity not the extent to which it is utilized. In addition, vessels which are currently deployed in a given trade, but which happened to be in dry dock on the grandfather date, would be included in the computation of service offered as of the grandfather date, although any substitute vessels for the vessels in dry dock would not be included, so that there would be no "double counting." Thus, if on a given date in a trade, a contractor is offering two ships, each of 1000 TEU capacity, each sailing every other week, and solely in that trade, the carrier's level of service as of the date in the trade would be 1000 TEU weekly, or 52,142 TEU annually. This would be the grandfather level even if the service offered as of the grandfather date by that contractor is, on an annualized basis, greater than the service the carrier offered over the preceding 12 calendar months.

Section 103(h)(1)(B) of the reported bill also would specifically provide that the grandfather level does not include any restriction on frequency or number of sailings or on ports called within the overall capacity grandfathered. Thus, within the relevant trade, the contractor could, for example, offer more or less frequent sailings, on different vessels, and to or from different ports, so long as the

capacity offered in that trade was within the grandfathered level for that trade. However, once the contractor offers the grandfathered level of service within a given year, additional service in that trade within that year would not be authorized as a grandfathered level of service. Such additional service would have to have a basis other than grandfathered level of service (i.e., written permission under subsection (a) or authorization as growth in trade service) to be offered in accordance with this section.

With respect to service other than containership service (section 103(h)(1)(A) of the reported bill), the rules would be similar to those for containership service. However, total annual capacity would be measured not by taking the relevant vessels' configuration and sailing frequency as of the grandfather date, but (subject to exceptions) by adding up service over the twelve calendar months preceding the grandfather date. Thus, for service subject to section 103(h)(1)(A) of the reported bill, the level of service would be calculated as follows (unless an exception within section 103(h)(1)(A) of the reported bill applied). If, for example, in the 12 calendar month period the contractor provided service with two vessels, one with 500 TEU capacity which made 12 voyages in the trade and one with 200 TEU capacity which made 20 voyages in the trade, the grandfathered level of service of that contractor in that trade would be 500 × 12 plus 200 × 20, or 10,000 TEUs (though the contractor would not be bound to the same service patterns, frequency, or vessels in offering such 10,000 TEUs annually).

Subsection (h)(2) would establish that the level of capacity which is grandfathered in a trade as of a date is that level so long as the service in the trade is not "abandoned" after that date. Section 103(h)(2) of the reported bill also would provide that the level of capacity "shall be described with the specificity required by subsection (e)(1)." This phrase would confirm that, to offer grandfathered service, a contractor must follow the procedures set forth in section 103(e)(1) of the reported bill, which requires submission of information to the Secretary. The confirmation in section 103(h)(2) of the reported bill that a contractor shall comply with section 103(e)(1) of the reported bill, however, would not mean that specific information provided pursuant to section 103(e)(1) of the reported bill, such as vessels and itinerary, limit the way (port calls, vessel size, frequency) in which a contractor provides service within a grandfathered level of service as defined in section 103(h)(1) of the reported bill. As set forth in section 103(h)(1) of the reported bill, once the overall capacity which is the grandfathered level of service is determined, the contractor would have operational flexibility within it.

With respect to growth in trade, sections 103(b) and (d) of the reported bill would establish that, in addition to any grandfathered capacity, section 103(a) would not apply to a contractor's providing an increase over that grandfathered capacity in proportion to the annual increase in real gross product of the relevant noncontiguous State or Commonwealth since the grandfather date. Thus, for example, if one year after the grandfather date the relevant real gross product is 3 percent larger, the contractor can then offer a level of capacity 3 percent higher than the grandfather level. This growth in trade feature would not be applicable to non-grand-

fathered service. Increases in non-grandfathered service would be fully subject to section 103(a) of the reported bill. Detailed issues such as how to determine the ''annual'' increase in a real gross product since a grandfather date with respect to a fractional portion of a year would be within the discretion of the Secretary.

The following describes procedures for determining grandfathered and growth in trade service. Sections 103(e)(1) and (e)(2) of the reported bill would establish procedures to be followed regarding implementation of grandfathered and growth in trade service, respectively, in a relevant trade. In each case, an application would be required to set forth what the applicant believes it is entitled to offer under the applicable subsection. In addition, these sections would require the submission of specified additional information. The additional information is not the level of service itself or the increase in real gross product itself, but additional information to assist the Secretary in determining the grandfathered level of service or the increase in real gross product in the relevant State or Commonwealth since the grandfather date.

Upon receipt of the application, the Secretary would be required to cause notice of the application to be published in the Federal Register, allowing 30 days from such publication for comments. Within 15 days after the close of the comment period, the Secretary would be required to issue a written determination on the applicable issue. While the Committee fully expects the Secretary will issue timely decisions, the provisions underscore that the right to offer grandfathered and growth in trade service would be established by statute, not by the Secretary. The Secretary would be responsible, however, for making a determination as to the precise levels of such statutorily authorized service. Thus, section 103(e) of the reported bill would provide that, in case the Secretary does not issue a timely determination, the contractor would be fully permitted to implement the level of service set forth in the application until such time as the Secretary issues the determination. Because section 103 of the reported bill would expressly permit the contractor to proceed to implement the level of service sought in a case where the Secretary does not issue a timely decision, if, in such a case, the Secretary's subsequent determination would establish a lower level than the contractor sought, the contractor would not have subjected itself to loss of payments under section 103(f) of the reported bill by offering that higher level of service between the time when the Secretary should have issued the determination and the time when the determination was issued. It is intended that any such higher level of service, offered by the contractor after the date when the decision was due but prior to the Secretary's decision, be counted, however, in measuring the level of service offered by the contractor during the longer overall period which is the subject of the Secretary's determination (with respect to grandfather or growth in trade authority). Again, however, it is the Committee's firm intent that the Secretary make section 103(e) of the reported bill determinations within the statutory deadline.

Section 103(f) of the reported bill would provide for denial of payments for any time period when service is offered in a noncontiguous domestic trade, by an MSFP contractor, beyond the level authorized by or pursuant to this section. The Secretary would deny

payments only in part, however, with respect to provision of service beyond such level which is de minimis or not material, with the part to be denied to be determined by the Secretary.

Section 103(g) of the reported bill would provide a specific mechanism allowing an MSFP contractor to temporarily provide additional service in a noncontiguous domestic trade in emergency circumstances and, even then, only pursuant to temporary permission granted by the Secretary.

TITLE II—OPERATING FLEXIBILITY AND REGULATORY RELIEF

Section 201. Operational flexibility

This section would amend section 804 of the 1936 Act (46 U.S. Code App. 1222) to permit contractors under the MSFP and ODS programs to operate, under specified conditions, foreign-flag vessels and to enter into space chartering arrangements.

Section 201(a) of the reported bill, by creating new section 804(f) of the 1936 Act, would specify that an MSFP or ODS contractor could conduct certain foreign-flag operations without preapproval of the Secretary or delay. The creation of new section 804(f) would not diminish the right of a contractor to apply, under existing section 804(b), for permission to operate foreign-flag vessels when operation of such vessels is not established by right by new section 804(f). Similarly, the addition of new subsection 804(f) would not establish any restriction on the ability of a U.S-flag vessel or vessel space to be chartered out to a foreign citizen or carrier. The restrictions of section 804 pertain only to a contractor's use of foreign-flag vessels, not to selling U.S.-flag space to others.

The Committee notes that new section 804(f) would authorize foreign-flag vessel operation, by an ODS or MSFP contractor, in line haul service between U.S. and foreign ports, if the vessel was owned, chartered, or operated by the contractor, or an affiliate of the contractor, on the date of enactment of the reported bill, or if the vessel is a replacement for such a vessel. The term replacement in new section 804(f) is intended in its commercially practical meaning; a replacement vessel can differ in size or deployment from the vessel being replaced. Foreign-flag vessels in line haul service would be required to be under a foreign registry deemed acceptable by the Secretary.

Under section 201(b) of the reported bill the reforms made by this provision would not take effect for an ODS contractor until one of two specified conditions occurs.

Section 202. Registration reform

This section would amend section 9 of the Shipping Act, 1916 (46 U.S. Code App. 808) by adding a new section 9(e), which would allow the owner of a U.S.-flag vessel to place a vessel under foreign registry if any one of four conditions described in new section 9(e) is met. These conditions generally relate to the expiration of existing contracts, admittance of replacement vessels, or the nonavailability of new contracts. The addition of new section 9(e) would not restrict the Secretary's authority with respect to consideration of applications under existing section 9(c) of that Act.

Section 203. Restriction removal

This section would add a new section 512 to the 1936 Act, which would reaffirm a longstanding executive branch interpretation of applicable statutes that all restrictions and requirements under existing sections 503, 506, and 802 of the 1936 Act applicable to a liner vessel built using a construction-differential subsidy terminate beginning on the date that is 25 years from the date of original delivery of the vessel from the shipyard.

Section 204. Vessel standards

This section would authorize a liner vessel documented under foreign flag on the date of enactment of this bill to be documented as a U.S. flag vessel after the Secretary determines: (1) the vessel is classed by an acceptable classification society; and (2) the vessel complies with applicable international agreements and the associated guidelines for vessel construction and equipment of the country of registry, if the Secretary has not identified that country as inadequately enforcing such international agreements. Additionally, the Secretary may rely upon an accepted classification society's certification that the vessel meets those international standards.

This provision is intended to ensure that liner vessels which meet internationally accepted construction and equipment standards and are reflagged as vessels of the United States under the reported bill are not required to retrofit material and equipment solely for the purpose of complying with U.S. law and regulations, where such law or regulations establish a standard exceeding the internationally accepted standard which applied to the vessel before it was reflagged. This section of the reported bill would also provide that certification provided by the American Bureau of Shipping or other classification society accepted by the Secretary may be relied upon with regard to ensuring compliance with the International standards.

TITLE III—LOAN GUARANTEES AND SHIP REPAIR

Section 301. Title XI loan guarantees

This section would amend title 46, U.S. Code, to correct an unintended interpretation of a provision of the loan guarantee program authorized by title XI of the 1936 Act (46 U.S. Code App. 1271 et seq.) (Title XI) that discourages the documentation of Title XI guarantee financed vessels under the U.S. flag.

Section 302. Vessel loan guarantee program

This section would amend title 46, U.S. Code, to increase the effectiveness of the Title XI program by clarifying the methodology to be used to determine the risk factor for the vessel loan guarantee program. This section would shift the program from the current fixed risk factor system to a loan-by-loan risk factor system. This change should expand the total dollar amount of loan guarantees that may be made for a given appropriation amount by encouraging the acceptance of low-risk Title XI applications. This section would also reform the system under which Title XI application fees are to be paid and financed. Additionally, this section would expand

the scope of the Secretary's Title XI authority to include fishing vessel loan guarantees.

Section 303. Vessel repair and maintenance pilot program

This section would establish a vessel repair and maintenance pilot program intended to determine whether "phased maintenance" contracts with full service shipyards for repair and maintenance of RRF vessels are more effective than repeatedly soliciting bids for one-time repairs. This program would respond to the numerous problems experienced in activating RRF vessels during Desert Storm.

TITLE IV—MISCELLANEOUS

Section 401. Merchant mariner benefits

This section would amend title 46, U.S. Code, by adding a new chapter 112 which would authorize minimal veterans' benefits for certain merchant seamen who served during the period August 16, 1945 to December 31, 1946.

Section 402. Reemployment rights for certain merchant seamen

This section would amend the 1936 Act by adding a new section 302 which would grant, for certain merchant seamen who are employed in the activation and operation of a vessel used by the United States for a war, armed conflict, national emergency, or maritime mobilization need, reemployment rights which are substantially equivalent to those granted returning military reservists.

Section 403. Extension of war risk insurance authority

This section would amend title 46, U.S. Code, to extend the Secretary's authority to provide insurance against loss or damage caused by marine war risks from June 30, 1995, to June 30, 2000.

Section 404. Amendment to the Merchant Ship Sales Act

This section would amend section 11(b)(2) the Merchant Ship Sales Act of 1946 (50 U.S. Code App. 1744(b)(2)) to specify that the Secretary of Defense, instead of the Secretary of the Navy, is the Government official who, in accordance with the memorandum of agreement between the Secretary and the Secretary of Defense, requests the use of a vessel in the National Defense Reserve Fleet.

Section 405. Reporting requirement reduction

This section would amend section 308(c) of title 49, U.S. Code, to reduce the frequency of a report on U.S. ports from annually to every even numbered year.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 46—UNITED STATES CODE

Subtitle II—Vessels and Seamen

PART G—MERCHANT SEAMEN PROTECTION AND RELIEF

Chapter 112—Merchant Mariner Benefits

§ 11201. Qualified service

For purposes of this chapter, a person engaged in qualified service if, between August 16, 1945, and December 31, 1946, the person—

(1) was a member of the United States merchant marine (including the Army Transport Service and the Naval Transportation Service) serving as a crewmember of a vessel that was—

(A) operated by the War Shipping Administration or the Office of Defense Transportation (or an agent of the Administration or Office);

(B) operated in waters other than inland waters, the Great Lakes, other lakes, bays, and harbors of the United States;

(C) under contract or charter to, or property of, the Government of the United States; and

(D) serving the Armed Forces; and

(2) while so serving, was licensed or otherwise documented for service as a crewmember of such a vessel by an officer or employee of the United States authorized to license or document the person for such service.

§ 11202. Documentation of qualified service

(a) The Secretary shall, upon application—

(1) issue a certificate of honorable discharge to a person who, as determined by the Secretary, engaged in qualified service of a nature and duration that warrants issuance of the certificate; and

(2) correct, or request the appropriate official of the Federal Government to correct, the service records of the person to the extent necessary to reflect the qualified service and the issuance of the certificate of honorable discharge.

(b) The Secretary shall take action on an application under subsection (a) not later than one year after the Secretary receives the application.

(c) In making a determination under subsection (a)(1), the Secretary shall apply the same standards relating to the nature and duration of service that apply to the issuance of honorable dis-

charges under section 401(a)(1)(B) of the GI Bill Improvement Act of 1977 (38 U.S.C. 106 note).

(d) An official of the Federal Government who is requested to correct service records under subsection (a)(2) shall do so.

§ 11203. Eligibility for certain veterans' benefits

(a) The qualified service of an individual who—

(1) receives an honorable discharge certificate under section 11202 of this title, and

(2) is not eligible under any other provision of law for benefits under laws administered by the Secretary of Veterans Affairs, is deemed to be active duty in the Armed Forces during a period of war for purposes of eligibility for benefits under chapters 23 and 24 of title 38.

(b) The Secretary shall reimburse the Secretary of Veterans Affairs for the value of benefits that the Secretary of Veterans Affairs provides for an individual by reason of eligibility under this section.

(c) An individual is not entitled to receive, and may not receive, benefits under this chapter for any period before the date on which this chapter takes effect.

§ 11204. Processing fees

(a) The Secretary shall collect a fee of $30 from each applicant for processing an application submitted under section 11202(a) of this title.

(b) Amounts received by the Secretary under this section shall be credited to appropriations available to the Secretary for carrying out this chapter.

SHIPPING ACT, 1916

[46 U.S.C. App. 808]

SEC. 9. REGISTRATION, ENROLLMENT AND LICENSING OF VESSELS PURCHASED, CHARTERED, OR LEASED; REGULATIONS; COASTWISE TRADE.

(a) [Repealed]

(b) Every vessel purchased, chartered, or leased from the Secretary of Transportation shall, unless otherwise authorized by the Secretary of Transportation, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

(c) Except as provided in section 611 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1181), and sections 31322(a)(1)(D) and 31328 of title 46, United States Code, a person may not, without the approval of the Secretary of Transportation—

(1) sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel (except in a vessel that has been operated only as a fishing vessel,

fish processing vessel, or fish tender vessel (as defined in section 2101 of title 46, United States Code) or in a vessel that has been operated only for pleasure) owned by a citizen of the United States or the last documentation of which was under the laws of the United States; or

(2) place a documented vessel, or a vessel the last documentation of which was under the laws of the United States, under foreign registry or operate that vessel under the authority of a foreign country.

(d)(1) Any charter, sale, transfer, or mortgage of a vessel, or interest in or control of that vessel, contrary to this section is void.

(2) A person that knowingly charters, sells, transfers, or mortgages a vessel, or interest in or control of that vessel, contrary to this section shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.

(3) A documented vessel may be seized by, and forfeited to, the United States Government if—

(A) the vessel is placed under foreign registry or operated under the authority of a foreign country contrary to this section; or

(B) a person knowingly charters, sells, transfers, or mortgages a vessel, or interest or control in that vessel, contrary to this section.

(4) A person that charters, sells, transfers, or mortgages a vessel, or an interest in or control of a vessel, in violation of this section is liable to the United States Government for a civil penalty of not more than $ 10,000 for each violation.

(e) Notwithstanding subsection (c)(2), the Merchant Marine Act, 1936, or any contract entered into with the Secretary of Transportation under that Act, a vessel may be placed under a foreign registry, with approval of the Secretary, if—

(1)(A) the Secretary determines that at least one replacement vessel of a capacity that is equivalent or greater, as measured by deadweight tons, gross tons, or container equivalent units, as appropriate, is documented under chapter 121 of title 46, United States Code, by the owner of the vessel placed under the foreign registry; and

(B) the replacement vessel is not more than 10 years of age on the date of that documentation;

(2)(A) an application for an operating agreement under subtitle B of title VI of the Merchant Marine Act, 1936 has been filed with respect to a vessel which is eligible to be included in the Maritime Security Fleet under section 651(b)(1) of that Act; and

(B) the Secretary has not awarded an operating agreement with respect to that vessel within 90 days after the date of that application;

(3) a contract covering the vessel under subtitle A of title VI of the Merchant Marine Act, 1936 has expired, and that vessel is more than 15 years of age on the date the contract expires; or

(4) an operating agreement covering the vessel under subpart B of title VI of the Merchant Marine Act, 1936 has not been renewed.

MERCHANT MARINE ACT, 1936

[46 U.S.C. App. 1131]

SEC. 301. MANNING AND WAGE SCALES; SUBSIDY CONTRACTS.

(a) INVESTIGATION OF WAGES AND WORKING CONDITIONS; ESTABLISHMENT OF WAGE AND MANNING SCALES; INCORPORATION IN SUBSIDY CONTRACTS.—The Secretary of Transportation is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings, to incorporate in the contracts authorized under Titles VI and VII of this Act [46 U.S.C. App. 1171 et seq. and 46 U.S.C. App. 1191 et seq.] minimum manning scales and minimum wage scales, and minimum working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales, and working conditions shall have been adopted by the Secretary of Transportation, no change shall be made therein by the Secretary of Transportation except upon public notice of the hearing to be had, and a hearing by the Secretary of Transportation of all interested parties, under such rules as the Secretary of Transportation shall prescribe. The duly elected representatives of the organizations certified as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearings. Every contractor receiving an operating-differential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales, and working conditions prescribed by his contract and applicable to such vessel: Provided, however, That any increase in the operating expenses of the subsidized vessel occasioned by any change in the wage or manning scales or working conditions as provided in this section shall be added to the operating-differential subsidy previously authorized for the vessel.

(b) SUBSIDY CONTRACTS; PROVISIONS RELATIVE TO OFFICERS AND CREW.—Every contract executed under authority of Titles VI and VII of this Act [46 U.S.C. App. 1171 et seq. and 46 U.S.C. App. 1191 et seq.] shall require—

(1) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew;

(2) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Secretary of Transportation providing they file such complaint or recommendation directly with the Secretary of Transportation, or with their immediate superior officer who shall be required to forward such complaint or recommendation with his remarks to the Secretary of Transportation, or with the authorized representatives of the respective collective bargaining agencies;

(3) Licensed officers who are members of the United States Naval Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the Bureau of Marine Inspection and Navigation;

(4) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia;

(5) No discrimination shall be practiced against licensed officers, who are otherwise qualified, because of their failure to qualify as members of the United States Naval Reserve.

SEC. 302. (a) An individual who is certified by the Secretary of Transportation under subsection (c) shall be entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided for by chapter 43 of title 38, United States Code, for any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty.

(b) An individual may submit an application for certification under subsection (c) to the Secretary of Transportation not later than 45 days after the date the individual completes a period of employment described in subsection (c)(1)(A) with respect to which the application is submitted.

(c) Not later than 20 days after the date the Secretary of Transportation receives from an individual an application for certification under this subsection, the Secretary shall—

(1) determine whether or not the individual—

(A) was employed in the activation or operation of a vessel—

(i) in the National Defense Reserve Fleet maintained under section 11 of the Merchant Ship Sales Act of 1946, in a period in which that vessel was in use or being activated for use under subsection (b) of that section;

(ii) that is requisitioned or purchased under section 902 of this Act; or

(iii) that is owned, chartered, or controlled by the United States and used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance); and

(B) during the period of that employment, possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 71 or chapter 73 (as applicable) of title 46, United States Code; and

(2) if the Secretary makes affirmative determinations under paragraph (1)(A) and (B), certify that individual under this subsection.

(d) For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) shall be considered

to be the equivalent of a certificate referred to in paragraph (1) of section 4301(a) of title 38, United States Code.

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TITLE V—CONSTRUCTION-DIFFERENTIAL SUBSIDY

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SEC. 512. LIMITATION ON RESTRICTIONS.

Notwithstanding any other provision of law or contract, all restrictions and requirements under sections 503, 506, and 802 applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.

[TITLE VI—OPERATING—DIFFERENTIAL SUBSIDY]

TITLE VI—VESSEL OPERATING ASSISTANCE PROGRAMS

Subtitle A—Operating-Differential Subsidy Program

[46 U.S.C. App. 1171]

SEC. 601. SUBSIDY AUTHORIZED FOR OPERATION OF VESSELS IN FOREIGN TRADE OR IN OFF-SEASON CRUISES.

(a) APPLICATION FOR SUBSIDY; CONDITIONS PRECEDENT TO GRANTING.—The Secretary of Transportation is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises authorized under section 613 of this title [46 U.S.C. App. 1183]. In this title VI [46 U.S.C. App. 171 et seq.] the term "essential service" means the operation of a vessel on a service, route, or line described in section 211(a) [46 U.S.C. App. 1121(a)] or in bulk cargo carrying service described in section 211(b) [46 U.S.C. App. 1121(b)]. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition and to promote the foreign commerce of the United States except to the extent such vessels are to be operated on cruises authorized under section 613 of this title [46 U.S.C. App. 1183], and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date; (2) the applicant owns or leases, or can and will build or purchase or lease,

a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate in an essential service, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this Act. To the extent the application covers cruises, as authorized under section 613 of this title [46 U.S.C. App. 1183], the Secretary of Transportation may make the portion of this last determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

(b) STATEMENTS AS TO FINANCIAL INTERESTS TO ACCOMPANY APPLICATION; PENALTY FOR FALSE STATEMENTS.—Every application for an operating-differential subsidy under the provisions of this title [46 U.S.C. App. 1171 et seq.] shall be accompanied by statements disclosing the names of all persons having any pecuniary interest, direct or indirect, in such application, or in the ownership or use of the vessel or vessels, routes, or lines covered thereby, and the nature and extent of any such interest, together with such financial and other statements as may be required by the Secretary of Transportation. All such statements shall be under oath or affirmation and in such form as the Secretary of Transportation shall prescribe. Any person who, in an application for financial aid under this title [46 U.S.C. App. 1171 et seq.] or in any statement required to be filed therewith, willfully makes any untrue statement of a material fact, shall be guilty of misdemeanor.

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[46 U.S.C. App. 1175]

SEC. 605. VESSELS EXCLUDED FROM SUBSIDY.

(a) VESSELS ENGAGED IN COASTWISE OR INTERCOASTAL TRADE; VESSELS ON INLAND WATERWAYS.—No operating-differential subsidy shall be paid for the operation of any vessel on a voyage on which it engages in coastwise or intercoastal trade: Provided, however, That such subsidy may be paid on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States or a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and if the subsidized vessel earns any gross revenue on the carriage of mail, passengers, or cargo by reason of such coastal or intercoastal trade the subsidy payment for the entire voyage shall be reduced by an amount which bears the same ratio to the subsidy otherwise payable as such gross revenue bears to the gross revenue derived from the entire voyage. No vessel operating

on the inland waterways of the United States shall be considered for the purposes of this Act to be operating in foreign trade.

[(b) VESSELS MORE THAN 25 YEARS OLD.—No operating-differential subsidy shall be paid for the operation of a vessel that is more than twenty-five years of age unless the Secretary of Transportation finds that it is to the public interest to grant such financial aid for the operation of such vessel and enters a formal order thereon.]

(b) No operating-differential subsidy shall be paid for the operation of a vessel after the calendar year the vessel becomes 25 years of age, unless the Secretary of Transportation has determined, before the date of enactment of the Maritime Reform and Security Act of 1995, that it is in the public interest to grant such financial aid for the operation of such vessel.

(c) VESSELS TO BE OPERATED IN AN ESSENTIAL SERVICE SERVED BY CITIZENS OF THE UNITED STATES.—No contract shall be made under this title [46 U.S.C. App. 1171 et seq.] with respect to a vessel to be operated in an essential service served by citizens of the United States which would be in addition to the existing service, or services, unless the Secretary of Transportation shall determine after proper hearing of all parties that the service already provided by vessels of United States registry is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon; and no contract shall be made with respect to a vessel operated or to be operated in an essential service served by two or more citizens of the United States with vessels of United States registry, if the Secretary of Transportation shall determine the effect of such a contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in such essential service, unless following public hearing, due notice of which shall be given to each operator serving such essential service, the Secretary of Transportation shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry. The Secretary of Transportation, in determining for the purposes of this section whether services are competitive, shall take into consideration the type, size, and speed of the vessels employed, whether passenger or cargo, or combination passenger and cargo, vessels, the ports or ranges between which they run, the character of cargo carried, and such other facts as he may deem proper.

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SEC. 616. (a) After the date of enactment of the Maritime Reform and Security Act of 1995, the Secretary of Transportation shall not enter into any new contract for operating-differential subsidy under this subtitle.

(b) Notwithstanding any other provision of this Act, any operating-differential subsidy contract in effect under this title on the day before the date of enactment of the Maritime Reform and Security Act of 1995 shall continue in effect and terminate as set forth in the contract, unless voluntarily terminated at an earlier date by the parties (other than the United States Government) to the contract.

(c) The essential service requirements of section 601(a) and 603(b), and the provisions of sections 605(c) and 809(a), shall not apply to

the operating-differential subsidy program under this subtitle effective upon the earlier of—

(1) the date that a payment is made, under the Maritime Security Program established by subtitle B to a contractor under that subtitle who is not party to an operating-differential subsidy contract under this subtitle, with the Secretary to cause notice of the date of such payment to be published in the Federal Register as soon as possible; or

(2) with respect to a particular contractor under the operating-differential subsidy program, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by subtitle B.

(d)(1) Notwithstanding any other provision of law, a vessel may be transferred and registered under a foreign registry deemed acceptable by the Secretary of Transportation if—

(A) the operator of the vessel receives an operating-differential subsidy pursuant to a contract under this subtitle which is in force on October 1, 1994, and the Secretary approves the replacement of such vessel with a comparable vessel, or

(B) the vessel is included in an operating agreement under subtitle B, and the Secretary approves the replacement of such vessel with a comparable vessel for inclusion in the Maritime Security Fleet established under subtitle B.

(2) Any such vessel may be requisitioned by the Secretary of Transportation pursuant to section 902.

SUBTITLE B—MARITIME SECURITY FLEET PROGRAM

ESTABLISHMENT OF FLEET

SEC. 651. (a) IN GENERAL.—The Secretary of Transportation shall establish a fleet of active, militarily useful, privately-owned vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The Fleet shall consist of privately owned, United States-flag vessels for which there are in effect operating agreements under this subtitle, and shall be known as the Maritime Security Fleet.

(b) VESSEL ELIGIBILITY.—A vessel is eligible to be included in the Fleet if the vessel is self-propelled and—

(1)(A) is operated by a person in that person's capacity as an ocean common carrier (as that term is used in the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.));

(B) whether in commercial service, on charter to the Department of Defense, or in other employment, is either—

(i) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units; or

(ii) a LASH vessel with a barge capacity of at least 75 barges; or

(C) any other type of vessel that is determined by the Secretary to be suitable for use by the United States for national defense or military purposes in time of war or national emergency;

(2)(A)(i) is a United States-documented vessel; and

(ii) on the date an operating agreement covering the vessel is first entered into under this subtitle, is—

(I) a LASH vessel that is 25 years of age or less; or

(II) any other type of vessel that is 15 years of age or less; except that the Secretary of Transportation may waive the application of clause (ii) if the Secretary, in consultation with the Secretary of Defense, determines that the waiver is in the national interest; or

(B) it is not a United States-documented vessel, but the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of title 46, United States Code, if it is included in the Fleet, and the vessel will be less than 10 years of age on the date of that documentation; and

(3) the Secretary of Transportation determines that the vessel is necessary to maintain a United States presence in international commercial shipping or, after consultation with the Secretary of Defense, determines that the vessel is militarily useful for meeting the sealift needs of the United States with respect to national emergencies.

OPERATING AGREEMENTS

SEC. 652. (a) IN GENERAL.—The Secretary of Transportation shall require, as a condition of including any vessel in the Fleet, that the owner or operator of the vessel enter into an operating agreement with the Secretary under this section. Notwithstanding subsection (g), the Secretary may enter into an operating agreement for, among other vessels that are eligible to be included in the Fleet, any vessel which continues to operate under an operating-differential subsidy contract under subtitle A or which is under charter to the Department of Defense.

(b) REQUIREMENTS FOR OPERATION.—An operating agreement under this section shall require that, during the period a vessel is included in the agreement—

(1) the vessel—

(A) shall be operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under section 12105 of title 46, United States Code, and

(B) shall not otherwise be operated in the coastwise trade; and

(2) the vessel shall be documented under chapter 121 of title 46, United States Code.

(c) REGULATORY RELIEF.—A contractor of a vessel included in an operating agreement under this subtitle may operate the vessel in the foreign commerce of the United States without restriction, and shall not be subject to any requirement under section 801, 808, 809, or 810 of this Act. Participation in the program established by this subtitle shall not subject a contractor to section 805 or to any provision of subtitle A of title VI of this Act.

(d) EFFECTIVENESS AND ANNUAL PAYMENT REQUIREMENTS OF OPERATING AGREEMENTS.—

(1) EFFECTIVENESS.—The Secretary of Transportation may enter into an operating agreement under this subtitle for fiscal year 1996. The agreement shall be effective only for 1 fiscal

year, but shall be renewable, subject to the availability of appropriations or amounts otherwise made available, for each subsequent fiscal year through the end of fiscal year 2005. The Secretary shall renew an operating agreement under this subtitle if sufficient amounts are appropriated or otherwise made available to fund that agreement.

(2) ANNUAL PAYMENT.—An operating agreement under this subtitle shall require, subject to the availability of appropriations and the other provisions of this section, that the Secretary of Transportation pay each fiscal year to the contractor, for each vessel that is covered by the operating agreement, an amount equal to $2,300,000 for fiscal year 1996 and $2,100,000 for each fiscal year thereafter in which the agreement is in effect. The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

(e) CERTIFICATION REQUIRED FOR PAYMENT.—As a condition of receiving payment under this section for a fiscal year for a vessel, the owner or operator of the vessel shall certify, in accordance with regulations issued by the Secretary of Transportation, that the vessel has been and will be operated in accordance with subsection (b)(1) for at least 320 days in the fiscal year. Days during which the vessel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

(f) OPERATING AGREEMENT IS OBLIGATION OF UNITED STATES GOVERNMENT.—An operating agreement under this subtitle constitutes a contractual obligation of the United States Government to pay the amounts provided for in the agreement to the extent of actual appropriations.

(g) LIMITATIONS.—The Secretary of Transportation shall not make any payment under this subtitle for a vessel with respect to any days for which the vessel is—

(1) subject to an operating-differential subsidy contract under subtitle A or under a charter to the United States Government, other than a charter pursuant to section 653;

(2) not operated or maintained in accordance with an operating agreement under this subtitle; or

(3) more than 25 years of age, except that the Secretary may make such payments for a LASH vessel for any day for which the vessel is more than 25 years of age if that vessel—

(A) is modernized after January 1, 1994,

(B) is modernized before it is 25 years of age, and

(C) is not more than 30 years of age.

(h) PAYMENTS.—With respect to payments under this subtitle for a vessel included in an operating agreement, the Secretary of Transportation—

(1) except as provided in paragraph (2), shall not reduce any payment for the operation of a vessel to carry military or other preference cargoes under section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–1), section 901(a), 901(b), or 901b of this Act, or any other cargo preference law of the United States;

(2) shall not make any payment for any day that a vessel is engaged in transporting more than 7,500 tons of civilian bulk

preference cargoes pursuant to section 901(a), 901(b), or 901b that is bulk cargo; and

(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that a vessel covered by an operating agreement is not operated in accordance with subsection (b)(1), with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated.

(i) PRIORITY FOR AWARDING AGREEMENTS.—Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

(1) VESSELS OWNED BY CITIZENS.—

(A) PRIORITY.—First, for any vessel that is—

(i) owned and operated by persons who are citizens of the United States under section 2 of the Shipping Act, 1916; or

(ii) less than 10 years of age and owned and operated by a corporation that is—

(I) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(II) affiliated with a corporation operating or managing for the Secretary of Defense other vessels documented under that chapter, or chartering other vessels to the Secretary of Defense.

(B) LIMITATION ON NUMBER OF OPERATING AGREEMENTS.—The number of vessels for which operating agreements may be entered into by the Secretary under the priority in subparagraph (A)—

(i) for vessels described in subparagraph (A)(i), may not, for a person, exceed the sum of—

(I) the number of United States-documented vessels the person operated in the trade described by subsection (b)(1)(A) of this section on May 17, 1995; and

(II) the number of United States-documented vessels the person chartered to the Secretary of Defense on that date; and

(ii) for vessels described in subparagraph (A)(ii), may not exceed 5 vessels.

(C) TREATMENT OF RELATED PARTIES.—For purposes of subparagraph (B), a related party with respect to a person shall be treated as the person.

(2) OTHER VESSELS OWNED BY CITIZENS AND GOVERNMENT CONTRACTORS.—To the extent that amounts are available after applying paragraph (1), any vessel that is owned and operated by a person who is—

(A) a citizen of the United States under section 2 of the Shipping Act, 1916, that has not been awarded an operating agreement under the priority established under paragraph (1); or

(B)(i) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(ii) affiliated with a corporation operating or managing other United States-documented vessels for the Secretary of

Defense or chartering other vessels to the Secretary of Defense.

(3) OTHER VESSELS.—To the extent that amounts are available after applying paragraphs (1) and (2), any other eligible vessel.

(j) TRANSFER OF OPERATING AGREEMENTS.—A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person eligible to enter into that operating agreement under this subtitle after notification of the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of that notification. A person to whom an operating agreement is transferred may receive payments from the Secretary under the agreement only if each vessel to be included in the agreement after the transfer is an eligible vessel under section 651(b).

(k) REVERSION OF UNUSED AUTHORITY.—The obligation of the Secretary to make payments under an operating agreement under this subtitle shall terminate with respect to a vessel if the contractor fails to engage in operation of the vessel for which such payment is required—

(1) within one year after the effective date of the operating agreement, in the case of a vessel in existence on the effective date of the agreement, or

(2) within 30 months after the effective date of the operating agreement, in the case of a vessel to be constructed after that effective date.

(l) PROCEDURE FOR CONSIDERING APPLICATION; EFFECTIVE DATE FOR CERTAIN VESSELS.—

(1) PROCEDURES.—No later than 30 days after the date of enactment of the Maritime Reform and Security Act of 1995, the Secretary shall accept applications for enrollment of vessels in the Fleet and, within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall enter into an operating agreement with the applicant or provide in writing the reason for denial of that application.

(2) EFFECTIVE DATE.—Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel which is, on the date of entry into an operating agreement, either subject to a contract under subtitle A or on charter to the United States Government, other than a charter under section 653, shall be the expiration or termination date of the contract under subtitle A or of the Government charter covering the vessel, respectively, or any earlier date the vessel is withdrawn from that contract or charter.

(m) EARLY TERMINATION.—An operating agreement under this subtitle shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement. Vessels included in an operating agreement terminated under this subsection shall remain documented under chapter 121 of title 46, United States Code, until the date the operating agreement would have terminated according to its terms. A contractor who terminates an operating agreement pursuant to this subsection shall continue to be bound by the provisions of sec-

tion 653 until the date the operating agreement would have terminated according to its terms. All terms and conditions of an Emergency Preparedness Agreement entered into under to section 653 shall remain in effect until the date the operating agreement would have terminated according to its terms, except that the terms of such Emergency Preparedness Agreement may be modified by the mutual consent of the contractor and the Secretary of Transportation, in consultation with the Secretary of Defense.

(n) TERMINATION FOR LACK OF FUNDS.—If, by the first day of a fiscal year, insufficient funds have been appropriated under the authority provided by section 655 for that fiscal year, the Secretary of Transportation shall notify the congress that operating agreements authorized under this subtitle for which insufficient funds are available will be terminated on the 60th day of that fiscal year if sufficient funds are not appropriated or otherwise made available by that date. If funds are not appropriated under the authority provided by section 655 or otherwise made available for any fiscal year by the 60th day of that fiscal year, then each vessel included in an operating agreement under this subtitle for which funds are not available is thereby released from any further obligation under the operating agreement, the operating agreement shall terminate, and the vessel owner or operator may transfer and register such vessel under a foreign registry deemed acceptable by the Secretary of Transportation, notwithstanding any other provision of law. If section 902 is applicable to such vessel after registry under such a registry, the vessel is available to be requisitioned by the Secretary of Transportation pursuant to section 902.

(o) AWARD OF OPERATING AGREEMENTS.—

(1) IN GENERAL.—The Secretary of Transportation, subject to paragraph (4), shall award operating agreements within each priority under subsection (i)(1), (2), and (3) under such regulations as may be prescribed by the Secretary, but the failure to promulgate such regulations shall not provide a basis for denial of an application for enrollment of a vessel in the Fleet.

(2) NUMBER OF AGREEMENTS AWARDED.—Regulations under paragraph (1) shall provide that if appropriated amounts are not sufficient for operating agreements for eligible vessels within a priority under subsection (i)(1), (2), or (3), the Secretary shall award to each person, with respect to eligible vessels within such priority for which such person has submitted an application for an operating agreement, a number of operating agreements that bears approximately the same ratio to the total number of eligible vessels in the priority for which timely applications have been made as the amount of appropriations available for operating agreements for eligible vessels in the priority bears to the amount of appropriations necessary for operating agreements for all eligible vessels in the priority.

(3) TREATMENT OF RELATED PARTIES.—For purposes of paragraph (2), a related party with respect to a person shall be treated as the person.

(4) PREFERENCE FOR U.S.-BUILT VESSELS.—In awarding operating agreements for vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall give preference to a vessel that was constructed in the United States, to the extent such

preference is consistent with establishment of a fleet described in the first sentence of section 651(a) (taking into account the age of the vessel, the nature of service provided by the vessel, and the commercial viability of the vessel).

(p) NOTICE TO U.S. SHIPBUILDERS REQUIRED.—The Secretary shall include in any operating agreement under this subtitle a requirement that the contractor under the agreement shall, by not later than 30 days after soliciting any bid or offer for the construction of any vessel in a foreign shipyard and before entering into a contract for construction of a vessel in a foreign shipyard, provide notice of the intent of the contractor to enter into such a contract to the Secretary of Transportation. The Secretary shall, by appropriate means, inform shipyards in the United States capable of constructing the vessel of such notice.

NATIONAL SECURITY REQUIREMENTS

SEC. 653. (a) EMERGENCY PREPAREDNESS AGREEMENT.—

(1) REQUIREMENT TO ENTER AGREEMENT.—The Secretary of Transportation shall establish an Emergency Preparedness Program under this section that is approved by the Secretary of Defense. Under the program, the Secretary of Transportation shall include in each operating agreement under this subtitle a requirement that the contractor enter into an Emergency Preparedness Agreement under this section with the Secretary. The Secretary shall negotiate and enter into an Emergency Preparedness Agreement with each contractor as promptly as practicable after the contractor has entered into an operating agreement under this subtitle.

(2) TERMS OF AGREEMENT.—An Emergency Preparedness Agreement under this section shall require that upon a request by the Secretary of Defense during time of war or national emergency, an owner or operator of a vessel included in an operating agreement under this subtitle shall make available commercial transportation resources (including services). The basic terms of the Emergency Preparedness Agreement shall be established pursuant to consultations among the Secretary, the Secretary of Defense, and Maritime Security Program contractors. In any Emergency Preparedness Agreement, the Secretary of Transportation, in consultation with the Secretary of Defense, and a contractor may agree to additional or modifying terms appropriate to the contractor's circumstances.

(b) RESOURCES MADE AVAILABLE.—The commercial transportation resources, including services, to be made available under an Emergency Preparedness Agreement shall include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, intermodal and management services, and other related services, or any agreed portion of such nonvessel resources for activation as the Secretary may determine to be necessary, seeking to minimize disruption of the contractor's service to commercial shippers.

(c) COMPENSATION.—

(1) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Defense, shall provide in each Emergency Preparedness Agreement for fair and reasonable

compensation for all commercial transportation resources, including services, provided pursuant to this section.

(2) SPECIFIC REQUIREMENTS.—Compensation under this subsection—

(A) shall not be less than the contractor's commercial market charges for like transportation resources, including services;

(B) shall include all the contractor's costs associated with provision and use of the contractor's commercial resources, including services, to meet emergency requirements;

(C) in the case of a charter of an entire vessel, shall be fair and reasonable;

(D) shall be in addition to and shall not in any way reflect amounts payable under section 652; and

(E) shall be provided from the time that a vessel or resource is diverted from commercial service until the time that it reenters commercial service.

(d) TEMPORARY REPLACEMENT VESSELS.—Notwithstanding any other provision of this subtitle or of other law to the contrary—

(1) a contractor may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity, as a temporary replacement for a United States-documented vessel or United States-documented vessel capacity that is activated under an Emergency Preparedness Agreement; and

(2) such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–1), and sections 901(a), 901(b), and 901b of this Act to the same extent as the eligibility of the vessel or vessel capacity replaced.

(e) REDELIVERY AND LIABILITY OF U.S. FOR DAMAGES.—

(1) IN GENERAL.—All commercial transportation resources activated under an Emergency Preparedness Agreement shall, upon termination of the period of activation, be redelivered to the contractor in the same good order and condition as when received, less ordinary wear and tear, or the Government shall fully compensate the contractor for any necessary repair or replacement.

(2) LIMITATION ON LIABILITY OF UNITED STATES.—Except as may be expressly agreed to in an Emergency Preparedness Agreement, or as otherwise provided by law, the Government shall not be liable for disruption of a contractor's commercial business or other consequential damages to a contractor arising from activation of commercial transportation resources, including services, under an Emergency Preparedness Agreement.

(3) LIMITATION ON APPLICATION OF OTHER REQUIREMENTS.—Sections 902 and 909 of this Act shall not apply to a vessel while it is included in an Emergency Preparedness Agreement under this subtitle. Any Emergency Preparedness Agreement entered into by a contractor shall supersede any other agreement between that contractor and the Government for vessel availability in time of war or national emergency.

DEFINITIONS

SEC. 654. In this subtitle:

(1) FLEET.—The term "Fleet" means the Maritime Security Fleet established pursuant to section 651(a).

(2) LASH VESSEL.—The term "LASH vessel" means a lighter aboard ship vessel.

(3) UNITED STATES-DOCUMENTED VESSEL.—The term "United States-documented vessel" means a vessel documented under chapter 121 of title 46, United States Code.

(4) BULK CARGO.—The term "bulk cargo" means cargo that is loaded and carried in bulk without mark or count.

(5) CONTRACTOR.—The term "contractor" means an owner or operator of a vessel that enters into an operating agreement for the vessel with the Secretary of Transportation under section 652.

AUTHORIZATION OF APPROPRIATIONS

SEC. 655. There are authorized to be appropriated for operating agreements under this subtitle, to remain available until expended, $100,000,000 for fiscal year 1996 and such sums as may be necessary, not to exceed $100,000,000, for each fiscal year thereafter through fiscal year 2005.

CHAPTER 27. MERCHANT MARINE ACT, 1936

[46 U.S.C. App. 1222]

SEC. 804. OPERATING COMPETING FOREIGN-FLAG VESSEL FORBIDDEN.

(a) OPERATING-DIFFERENTIAL SUBSIDY; COMPETITION WITH ESSENTIAL AMERICAN-FLAG SERVICE.—Except as provided in subsections (b) and (c) of this section, it shall be unlawful for any contractor receiving an operating-differential subsidy under title VI [46 U.S.C. App. 1171 et seq.] or for any charterer of vessels under title VII of this Act [46 U.S.C. App. 1191 et seq.], or any holding company, subsidiary, affiliate, or associate of such contractor or such charterer, or any officer, director, agent, or executive thereof, directly or indirectly to own, charter, act as an agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Transportation to be essential as provided in section 211 of this Act [46 U.S.C. App. 1121].

(b) WAIVER; SPECIAL CIRCUMSTANCES.—Under special circumstances and for good cause shown, the Secretary of Transportation may, in his discretion, waive the provisions of subsection (a) of this section as to any contractor, for a specific period of time.

(c) EXCEPTIONS.—Upon application to the Secretary of Transportation the provisions of subsection (a) of this section shall not apply to the following specified activities of any contractor under title VI [46 U.S.C. App. 1171 et seq.], or those in the foregoing specified relationship to him, who was not such a contractor on April 15, 1970, and who shall have complied with the requirement set forth in subsection (d) of this section:

(1) Until April 15, 1990—

(A) the continued ownership, charter, or operation of a foreign-flag vessel engaged in the carriage of dry or liquid cargoes in bulk which was owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, on April 15, 1970;

(B) the continued acting as agent or broker for a vessel described in subsection (c)(1)(A) of this section which is owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, and for which such contractor, or those in foregoing special relationship to him, were acting as agent or broker on April 15, 1970:

(2) [Repealed]

(d) STATEMENT TO BE FILED WITH SECRETARY.—No contractor under title VI [46 U.S.C. App. 1171 et seq.], whether he shall have become such a contractor before or after the date of enactment of this section [enacted Oct. 21, 1970], shall avail himself of the provisions of subsection (c) of this section unless not later than ninety days after the enactment of this section [enacted Oct. 21, 1970] there shall have been filed with the Secretary of Transportation a full and complete statement, satisfactory in form and substance to the Secretary, of all foreign-flag vessels which he, or those in the foregoing specified relationship to him, directly or indirectly owned, chartered, acted as agent or broker for, or operated on April 15, 1970.

(e) REPORT TO CONGRESS.—During the period of time provided for in subsection (c) of this section, the Secretary of Transportation shall include in the annual report pursuant to section 208 of this Act [46 U.S.C. App. 1118], a report on the activities of contractors under such subsection, including but not limited to, the nature and extent of such activities; its effect, if any, upon carrying forward the national policy declared in section 101 of this Act [46 U.S.C. App. 1101]; and the Secretary's recommendations for legislation, if such is deemed to be necessary.

(f) The provisions of subsection (a) shall not preclude a contractor receiving assistance under subtitle A or B of title VI, or any holding company, subsidiary, or affiliate of the contractor, or any officer, director, agent, or executive thereof, from—

(1) owning, chartering, or operating any foreign-flag vessel on a voyage or a segment of a voyage that does not call at a port in the United States;

(2) owning, chartering, or operating any foreign-flag vessel in line haul service between the United States and foreign ports if—

(A) the foreign-flag vessel was owned, chartered, or operated by, or is a replacement for a foreign-flag vessel owned, chartered, or operated by, such owner or operator, or any holding company, subsidiary, affiliate, or associate of such owner or operator, on the date of enactment of the Maritime Reform and Security Act of 1995;

(B) the owner or operator, with respect to each additional foreign-flag vessel, other than a time chartered vessel, has first applied to have that vessel included in an operating

agreement under subtitle B of title VI, and the Secretary has not awarded an operating agreement with respect to that vessel within 90 days after the filing of the application; or

(C) the vessel has been placed under foreign documentation pursuant to section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808) or section 616(d) or 652(n) of this Act, except that any foreign-flag vessel, other than a time chartered vessel, a replacement vessel under section 653(d), or a vessel owned, chartered, or operated by the owner or operator on the date of enactment of the Maritime Reform and Security Act of 1995, in line haul service between the United States and foreign ports is registered under the flag of a foreign registry deemed appropriate by the Secretary of Transportation, and available to be requisitioned by the Secretary of Transportation pursuant to section 902 of this Act;

(3) owning, chartering, or operating foreign-flag bulk cargo vessels that are operated in foreign-to-foreign service or the foreign commerce of the United States;

(4) chartering or operating foreign-flag vessels that are operated solely as replacement vessels for United States-flag vessels or vessel capacity that are made available to the Secretary of Defense pursuant to section 653 of this Act; or

(5) entering into time or space charter or other cooperative agreements with respect to foreign-flag vessels or acting as agent or broker for a foreign-flag vessel or vessels.

MERCHANT MARINE ACT, 1936

[46 U.S.C. App. 1271]

SEC. 1101. DEFINITIONS.

As used in this title [46 U.S.C. App. 1271 et seq.]—

(a) The term "mortgage" includes—

(1) a preferred mortgage as defined in section 31301 of title 46, United States Code; and

(2) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of title 46, United States Code [46 U.S.C. 31301 et seq.].

(b) The term "vessel" includes all types, whether in existence or under construction, of passenger cargo and combination passenger cargo carrying vessels, tankers, tugs, towboats, barges, dredges and ocean thermal energy conversion facilities or plantships which are or will be documented under the laws of the United States, fishing vessels whose ownership will meet the citizenship requirements for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended [46 U.S.C. App. 802], floating drydocks which have a capacity of thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels **[**owned by citizens of the United States**]**;

(c) The term "obligation" shall mean any note, bond, debenture, or other evidence of indebtedness (exclusive of notes or other obligations issued by the Secretary pursuant to subsection (d) of section 1105 of this title [46 U.S.C. App. 1275(d)] and obligations eligible for investment of funds under section 1102 [46 U.S.C. App. 1272] and subsection (d) of section 1108 of this title [46 U.S.C. App. 1279a(d)]), issued for one of the purposes specified in subsection (a) of section 1104 of this title [46 U.S.C. App. 1274(a)];

(d) The term "obligor" shall mean any party primarily liable for payment of the principal of or interest on any obligation;

(e) The term "obligee" shall mean the holder of an obligation;

(f) The term "actual cost" of a vessel as of any specified date means the aggregate, as determined by the Secretary, of (i) all amounts paid by or for the account of the obligor on or before that date, and (ii) all amounts which the obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction or reconditioning of such vessel;

(g) The term "depreciated actual cost" of a vessel means the actual cost of the vessel depreciated on a straightline basis over the useful life of the vessel as determined by the Secretary, not to exceed twenty-five years from the date the vessel was delivered by the shipbuilder, or, if the vessel has been reconstructed or reconditioned, the actual cost of the vessel depreciated on a straightline basis from the date the vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning on the basis of the original useful life of the vessel and from the date of such reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the vessel determined by the Secretary, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning depreciated on a straightline basis on the basis of a useful life of the vessel determined by the Secretary;

(h) The terms "construction", "reconstruction", or "reconditioning" shall include, but shall not be limited to, designing, inspecting, outfitting, and equipping;

(i) The term "ocean thermal energy conversion facility or plantship" means any at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, which uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility or vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, freshwater, or product to shore, and all other associated equipment and appurtenances of such facility or vessel, to the extent they are located seaward of the highwater mark;

(j) The term "citizen of the Northern Mariana Islands" means—

(1) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

(2) a corporation, partnership, association, or other entity formed under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in paragraph (1) or citizens or nationals of the United States, in cases in which "owned" is used in the same sense as in section 2 of the Shipping Act, 1916 (46 U.S.C. 802) [46 U.S.C. App. 802];

(k) The term "fishery facility" means—

(1) for operations on land—

(A) any structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from one or more fisheries,

(B) the land necessary for any such structure or appurtenance described in subparagraph (A), and

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A);

(2) for operations other than on land, any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for, the processing of fish; or

(3) for aquaculture, including operations on land or elsewhere—

(A) any structure or appurtenance thereto designed for aquaculture;

(B) the land necessary for any such structure or appurtenance described in subparagraph (A);

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A); and

(D) any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for aquaculture;

but only if such structure, appurtenance, land, equipment, or vessel is owned by an individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands or by a corporation, partnership, association, or other entity that is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802) [46 U.S.C. App. 802], and for purposes of applying such section 2 [46 U.S.C. App. 802] with respect to this section—

(i) the term "State" as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States; and

(ii) citizens of the United States must own not less than 75 percent of the interest in the entity and nationals of the United States or citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting such ownership requirement;

(l) The term "fishing vessel" has the meaning given such term by section 3(11) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802(11)) [16 U.S.C. 1802(11)]; and any reference in this title to a vessel designed principally for commercial use in the fishing trade or industry shall be treated as a reference to a fishing vessel;

(m) The term "United States" when used in a geographical context with respect to fishing vessels or fishery facilities includes all States referred to in subsection (k)(i).

(n) The term "Secretary" means the Secretary of Commerce with respect to fishing vessels and fishing facilities as provided by this title [46 U.S.C. App. 1271 et seq.], and the Secretary of Transportation with respect to all other vessels and general shipyard facilities (as defined in section 1112(d)(3) [46 U.S.C. App. 1279e(d)(3)]).

(o) The term "eligible export vessel" means a vessel constructed, reconstructed, or reconditioned in the United States for use in world-wide trade which will, upon delivery or redelivery, be placed under or continued to be documented under the laws of a country other than the United States.

[46 U.S.C. App. 1273]

SEC. 1103. AUTHORIZATION OF SECRETARY TO GUARANTEE OBLIGATIONS.

(a) PRINCIPAL AND INTEREST.—The Secretary is authorized to guarantee, and to enter into commitments to guarantee, the payment of the interest on, and the unpaid balance of the principal of, any obligation which is eligible to be guaranteed under this title [46 U.S.C. App. 1271 et seq.]. A guarantee, or commitment to guarantee, made by the Secretary under this title [46 U.S.C. App. 1271 et seq.] shall cover 100 percent of the amount of the principal and interest of the obligation.

(b) SECURITY INTEREST.—No obligation shall be guaranteed under this title [46 U.S.C. App. 1271 et seq.] unless the obligor conveys or agrees to convey to the Secretary such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the Secretary may reasonably require to protect the interests of the United States.

(c) AMOUNT OF GUARANTEE; PERCENTAGE LIMITATION; DETERMINATION OF ACTUAL COST OF VESSEL.—The Secretary shall not guarantee the principal of obligations in an amount in excess of 75 per centum, or 87½ per centum, whichever is applicable under section 1104 of this title [46 U.S.C. App. 1274], of the amount, as determined by the Secretary which determination shall be conclusive, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of a vessel or vessels with respect to which a security interest has been conveyed to the Secretary, unless the obligor creates an escrow fund as authorized by section

1108 of this title [46 U.S.C. App. 1279a], in which case the Secretary may guarantee 75 per centum or 87½ per centum, whichever is applicable under section 1104 of this title [46 U.S.C. App. 1274], of the actual cost of such vessel or vessels.

(d) PLEDGE OF UNITED STATES.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this title [46 U.S.C. App. 1271 et seq.] with respect to both principal and interest, including interest, as may be provided for in the guarantee, accruing between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(e) PROOF OF OBLIGATIONS.—Any guarantee, or commitment to guarantee, made by the Secretary under this title [46 U.S.C. App. 1271 et seq.] shall be conclusive evidence of the eligibility of the obligations for such guarantee, and the validity of any guarantee, or commitment to guarantee, so made shall be incontestable. Notwithstanding an assumption of an obligation by the Secretary under section 1105 (a) or (b) of this Act [46 U.S.C. App. 1275(a), (b)], the validity of the guarantee of an obligation made by the Secretary under this title [46 U.S.C. App. 1271 et seq.] is unaffected and the guarantee remains in full force and effect.

(f) LIMITATION ON OUTSTANDING AMOUNT.—The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed $12,000,000,000, of which (1) $850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this title [46 U.S.C. App. 1271 et seq.], and (2) $3,000,000,000 shall be limited to obligations pertaining to guarantees of obligations for eligible export vessels. No additional limitations may be imposed on new commitments to guarantee loans for any fiscal year, except in such amounts as established in advance in annual authorization Acts. No vessel eligible for guarantees under this title shall be denied eligibility because of its type.

(g) LOAN GUARANTEES FOR EXPORT VESSELS; FINDING REQUIRED; TERMINATION OF AUTHORITY.—

(1) The Secretary may not issue a commitment to guarantee obligations for an eligible export vessel unless, after considering—

(A) the status of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States,

(B) the economic soundness of the applications referred to in subparagraph (A), and

(C) the amount of guarantee authority available, the Secretary determines, in the sole discretion of the Secretary, that the issuance of a commitment to guarantee obligations for an eligible export vessel will not result in the denial of an economically sound application to issue a commitment to guarantee obligations for vessels documented under the laws of the United States operating in the domestic or foreign commerce of the United States.

(2) The Secretary may not issue commitments to guarantee obligations for eligible export vessels under this section after the later of—

(A) the 5th anniversary of the date on which the Secretary publishes final regulations setting forth the application procedures for the issuance of commitments to guarantee obligations for eligible export vessels,

(B) the last day of any 5-year period in which funding and guarantee authority for obligations for eligible export vessels have been continuously available, or

(C) the last date on which those commitments may be issued under any treaty or convention entered into after the date of the enactment of the National Shipbuilding and Shipyard Conversion Act of 1993 that prohibits guarantee of those obligations.

(h)(1) The Secretary shall—

(A) establish in accordance with this subsection a system of risk categories for obligations guaranteed under this title, that categorizes the relative risk of guarantees made under this title with respect to the risk factors set forth in paragraph (3); and

(B) determine for each of the risk categories a subsidy rate equivalent to the average annual cost of obligations in the category, expressed as a percentage of the average annual aggregate amount guaranteed under this title for obligations in the category.

(2)(A) Before making a guarantee under this section for an obligation, the Secretary shall apply the risk factors set forth in paragraph (3) to place the obligation in a risk category established under paragraph (1)(A).

(B) The Secretary shall consider the aggregate amount available to the Secretary for making guarantees under this title to be reduced by the amount determined by multiplying—

(i) the amount guaranteed under this title for an obligation, by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A) of this paragraph.

(C) The estimated long-term cost to the Government of a guarantee made by the Secretary under this title for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) The Secretary may not guarantee obligations under this title after the aggregate amount available to the Secretary under appropriations Acts for the cost of loan guarantees is required by subparagraph (B) to be considered reduced to zero.

(3) The risk factors referred to in paragraphs (1) and (2) are the following:

(A) If applicable, the country risk for each eligible export vessel financed or to be financed by an obligation.

(B) The period for which an obligation is guaranteed or to be guaranteed.

(C) The portion of an obligation, which is guaranteed or to be guaranteed, in relation to the total cost of the project financed or to be financed by the obligation.

(D) The financial condition of an obligor or applicant for a guarantee.

(E) If applicable, any guarantee under this title for an associated project.

(F) If applicable, the projected employment of each vessel or equipment to be financed with an obligation.

(G) If applicable, the projected market that will be served by each vessel or equipment to be financed with an obligation.

(H) The collateral provided for a guarantee for an obligation.

(I) The management and operating experience of an obligor or applicant for a guarantee.

(J) Whether a guarantee is or will be in effect during the construction period of the project financed with the proceeds of a guaranteed obligation.

(4) In this subsection, the term "cost" has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

[46 U.S.C. App. 1274]

SEC. 1104A. ELIGIBILITY FOR GUARANTEE.

(a) PURPOSE OF OBLIGATIONS.—Pursuant to the authority granted under section 1103(a) [46 U.S.C. App. 1273(a)], the Secretary upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

(1) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel), which is designed principally for research, or for commercial use (A) in the coastwise or intercoastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade as defined in section 905 of this Act for purposes of title V of this Act; or (D) as an ocean thermal energy conversion facility or plantship; (E) with respect to floating drydocks in the construction, reconstruction, reconditioning, or repair of vessels; or (F) with respect to an eligible export vessel, in world-wide trade; Provided, however, That no guarantee shall be entered into pursuant to this paragraph (a)(1) later than one year after delivery, or redelivery in the case of reconstruction or reconditioning of any such vessel unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or vessels, or facilities or equipment pertaining to marine operations;

(2) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, reconditioning, or purchase of a vessel or vessels owned by citizens or nationals of the United States or citizens of the Northern Mariana Islands which are designed principally for research, or for commercial use in the fishing trade or industry;

(3) financing the purchase, reconstruction, or reconditioning of vessels or fishery facilities for which obligations were guaranteed under this title [46 U.S.C. App. 1271 et seq.] that, under the provisions of section 1105 [46 U.S.C. App. 1275]:

(A) are vessels or fishery facilities for which obligations were accelerated and paid;

(B) were acquired by the Fund; or

(C) were sold at foreclosure instituted by the Secretary;

(4) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to title V of this Act [46 U.S.C. App. 1151 et seq.], as amended;

(5) refinancing existing obligations issued for one of the purposes specified in (1), (2), (3), or (4) whether or not guaranteed under this title [46 U.S.C. App. 1271 et seq.], including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time; or

(6) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the construction, reconstruction, reconditioning, or purchase of fishery facilities.

Any obligation guaranteed under paragraph (6) shall be treated, for purposes of this title [46 U.S.C. App. 1271 et seq.], in the same manner and to the same extent as an obligation guaranteed under this title [46 U.S.C. App. 1271 et seq.] which aids in the construction, reconstruction, reconditioning, or purchase of a vessel; except with respect to provisions of this title [46 U.S.C. App. 1271 et seq.] that by their nature can only be applied to vessels.

(b) CONTENTS OF OBLIGATIONS. OBLIGATIONS GUARANTEED UNDER THIS TITLE [46 U.S.C. APP. 1271 ET SEQ.].—

(1) shall have an obligor approved by the Secretary as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vessels which serve as security for the guarantee of the Secretary;

(2) subject to the provisions of subsection (c)(1) and subsection (i), shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the Secretary, of the vessel which is used as security for the guarantee of the Secretary: Provided, however, That in the case of a vessel, the size and speed of which are approved by the Secretary, and which is or would have been eligible for mortgage aid for construction under section 509 of this Act [46 U.S.C. App. 1159] (or would have been eligible for mortgage aid under section 509 of this Act [46 U.S.C. App. 1159] except that the vessel was built with the aid of construction-differential subsidy and said subsidy has been repaid) and in respect of which the minimum downpayment by the mortgagor required by that section would be or would have been 12½ per centum of the cost of such vessel, such obligations may be in an amount which does not exceed 87½ per centum of such actual cost or depreciated actual cost: Provided, further, That the obligations which relate to a barge which is constructed without the aid of construction-differential subsidy, or, if so subsidized, on which said subsidy has been repaid, may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual

cost thereof: Provided further, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount equal to 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank: Provided further, That in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, such obligations may be in an aggregate principal amount which does not exceed 87½ percent of the actual cost or depreciated actual cost of the facility or plantship: Provided further, That in the case of an eligible export vessel, such obligations may be in an aggregate principal amount which does not exceed 87½ [percent] of the actual cost or depreciated actual cost of the eligible export vessel;

(3) shall have maturity dates satisfactory to the Secretary but, subject to the provisions of paragraph (2) of subsection (c) of this section, not to exceed twenty-five years from the date of the delivery of the vessel which serves as security for the guarantee of the Secretary or, if the vessel has been reconstructed or reconditioned, not to exceed the later of (i) twenty-five years from the date of delivery of the vessel and (ii) the remaining years of the useful life of the vessel as determined by the Secretary;

(4) shall provide for payments by the obligor satisfactory to the Secretary;

(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary;

(6) shall provide, or a related agreement shall provide, that if the vessel used as security for the guarantee of the Secretary is a delivered vessel, the vessel shall be in class A–1, American Bureau of Shipping, or shall meet such other standards as may be acceptable to the Secretary, with all required certificates, including but not limited to, marine inspection certificates of the United States Coast Guard or, in the case of an eligible export vessel, of the appropriate national flag authorities under a treaty, convention, or other international agreement to which the United States is a party, with all outstanding requirements and recommendations necessary for retention of class accomplished, unless the Secretary permits a deferment of such repairs, and shall be tight, stanch, strong, and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service; and

(7) may provide, or a related agreement may provide, if the vessel used as security for the guarantee of the Secretary is a passenger vessel having the tonnage, speed, passenger accommodations and other characteristics set forth in title V of this Act [46 U.S.C. App. 1151 et seq.], as amended, and if the Secretary approves, that the sole recourse against the obligor by

the United States for any payments under the guarantee shall be limited to repossession of the vessel and the assignment of insurance claims and that the liability of the obligor for any payments of principal and interest under the guarantee shall be satisfied and discharged by the surrender of the vessel and all right, title, and interest therein to the United States: Provided, That the vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever except the security interest conveyed to the Secretary under this title [46 U.S.C. App. 1271 et seq.], (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the obligor, except that any deficiencies with respect to freedom from encumbrances, condition and class may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the Secretary of claims of the obligor under such policies.

The Secretary may not establish, as a condition of eligibility for guarantee under this title [46 U.S.C. App. 1271 et seq.], a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this title [46 U.S.C. App. 1271 et seq.], the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

(c) SECURITY.—

(1) The security for the guarantee of an obligation by the Secretary under this title [46 U.S.C. App. 1271 et seq.] may relate to more than one vessel and may consist of any combination of types of security. The aggregate principal amount of obligations which have more than one vessel as security for the guarantee of the Secretary under this title [46 U.S.C. App. 1271 et seq.] may equal, but not exceed, the sum of the principal amount of obligations permissible with respect to each vessel.

(2) If the security for the guarantee of an obligation by the Secretary under this title [46 U.S.C. App. 1271 et seq.] relates to more than one vessel, such obligation may have the latest maturity date permissible under subsection (b) of this section with respect to any of such vessels: Provided, That the Secretary may require such payments of principal, prior to maturity, with respect to all related obligations as he deems necessary in order to maintain adequate security for his guarantee.

(d) RESTRICTIONS.—

(1) (A) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Transportation unless the Secretary finds that the property or project with respect to which the obligation will be executed will be economically sound. In making that determination, the Secretary shall consider—

(i) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title [46 U.S.C. App. 1271 et seq.] is in effect;

(ii) the market potential for the employment of the vessel over the life of the guarantee;

(iii) projected revenues and expenses associated with employment of the vessel;

(iv) any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) other relevant criteria; and

(vi) for inland waterways, the need for technical improvements, including but not limited to increased fuel efficiency, or improved safety.

(B) No commitment to guarantee, or guarantee of, and obligation shall be made by the Secretary of Commerce unless the Secretary finds, at or prior to the time such commitment is made or guarantee becomes effective, that the property or project with respect to which the obligation will be executed will be, in the Secretary's opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources, or with the need for technical improvements including but not limited to increased fuel efficiency or improved safety.

(2) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this title [46 U.S.C. App. 1271 et seq.] for the purchase of a used fishing vessel or used fishery facility unless—

(A) the vessel or facility will be reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(B) the vessel or facility will be used in the harvesting of fish from, or for a purpose described in section 1101(k) [46 U.S.C. App. 1271(k)] with respect to, an underutilized fishery.

(3) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this title for the construction, reconstruction, or reconditioning of an eligible export vessel unless—

(A) the Secretary finds that the construction, reconstruction, or reconditioning of that vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency, and

(B) the owner of the vessel agrees with the Secretary of Transportation that the vessel shall not be transferred to any country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

[(e) GUARANTEE FEES.—The Secretary is authorized to fix a fee for the guarantee of an obligation under this title [46 U.S.C. App. 1271 et seq.]. If the security for the guarantee of an obligation under this title [46 U.S.C. App. 1271 et seq.] relates to a delivered vessel, such fee shall not be less than one-half of 1 per centum per annum nor more than 1 per centum per annum of the average

principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit in an escrow fund created under section 1108 of this Act [46 U.S.C. App. 1279a]. If the security for the guarantee of an obligation under this title [46 U.S.C. App. 1271 et seq.] relates to a vessel to be constructed, reconstructed, or reconditioned, such fee shall not be less than one-quarter of 1 per centum per annum nor more than one-half of 1 per centum per annum of the average principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit in an escrow fund created under section 1108 of this Act [46 U.S.C. App. 1279a]. For purposes of this subsection (e), if the security for the guarantee of an obligation under this title [46 U.S.C. App. 1271 et seq.] relates both to a delivered vessel or vessels and to a vessel or vessels to be constructed, reconstructed, or reconditioned, the principal amount of such obligation shall be prorated in accordance with regulations prescribed by the Secretary. Fee payments shall be made by the obligor to the Secretary when moneys are first advanced under a guaranteed obligation and at least sixty days prior to each anniversary date thereafter. All fees shall be computed and shall be payable to the Secretary under such regulations as the Secretary may prescribe. Such regulations shall provide a formula for determining the creditworthiness of obligors under which the most creditworthy obligors pay a fee computed on the lowest allowable percentage and the least creditworthy obligors pay a fee which may be computed on the highest allowable percentage (the range of creditworthiness to be based on obligors which have actually issued guaranteed obligations).**]**

(e)(1) Except as otherwise provided in this subsection, the Secretary shall prescribe regulations to assess in accordance with this subsection a fee for the guarantee of an obligation under this title.

(2)(A) The amount of a fee under this subsection for a guarantee is equal to the sum determined by adding the amounts determined under subparagraph (B) for the years in which the guarantee is in effect.

(B) The amount referred to in subparagraph (A) for a year is the present value (determined by applying the discount rate determined under subparagraph (F)) of the amount determined by multiplying—

(i) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (determined in accordance with subparagraph (E)), by

(ii) the fee rate established under subparagraph (C) for the obligation for each year.

(C) The fee rate referred to in subparagraph (B)(ii) for an obligation shall be—

(i) in the case of an obligation for a delivered vessel or equipment, not less than one-half of 1 percent and not more than 1 percent, determined by the Secretary for the obligation under the formula established under subparagraph (D); or

(ii) in the case of an obligation for a vessel to be constructed, reconstructed, or reconditioned, or of equipment to be delivered, not less than one-quarter of 1 percent and not more than one-half of 1 percent, determined by the Secretary for the obligation under the formula established under subparagraph (D).

(D) The Secretary shall establish a formula for determining the fee rate for an obligation for purposes of subparagraph (C), that—

(i) is a sliding scale based on the creditworthiness of the obligor;

(ii) takes into account the security provided for a guarantee under this title for the obligation; and

(iii) uses—

(I) in the case of the most creditworthy obligors, the lowest rate authorized under subparagraph (C)(i) or (ii), as applicable; and

(II) in the case of the least creditworthy obligors, the highest rate authorized under subparagraph (C)(i) or (ii), as applicable.

(E) For purposes of subparagraph (B)(i), the estimated average unpaid principal amount does not include the average amount (except interest) on deposit in a year in the escrow fund under section 1108.

(F) For purposes of determining present value under subparagraph (B) for an obligation, the Secretary shall apply a discount rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding obligations of the United States having periods to maturity comparable to the period to maturity for the obligation with respect to which the determination of present value is made.

(3) A fee under this subsection shall be assessed and collected not later than the date on which amounts are first advanced under an obligation with respect to which the fee is assessed.

(4) A fee paid under this subsection is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the guaranteed obligation if the obligation is refinanced and guaranteed under this title after such refinancing.

(5) The amount guaranteed by the Secretary under this title shall include the amount of the fee paid under this subsection.

(f) INVESTIGATION OF APPLICATIONS.—The Secretary shall charge and collect from the obligor such amounts as he may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, for the issuance of commitments, for services in connection with the escrow fund authorized by section 1108 [46 U.S.C. App. 1279a] and for the inspection of such properties during construction, reconstruction, or reconditioning: Provided, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligations to be guaranteed.

(g) DISPOSITION OF MONEYS.—All moneys received by the Secretary under the provisions of sections 1101–1107 of this title [46 U.S.C. App. 1271–1276, 1279] shall be deposited in the Fund.

(h) ADDITIONAL REQUIREMENTS.—Obligations guaranteed under this title [46 U.S.C. App. 1271 et seq.] and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration, assumptions, and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payments of taxes, and such other matters as the Secretary may, in his discretion, prescribe.

(i) LIMITATION ON ESTABLISHMENT OF PERCENTAGE.—The Secretary may not, with respect to—

(1) the general 75 percent or less limitation in subsection (b)(2);

(2) the 87½ percent or less limitation in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or section 1112(b) [46 U.S.C. App. 1279e(b)]; or

(3) the 80 percent or less limitation in the 3rd proviso to such subsection;

establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

(j) PROCEDURE UPON RECEIVING LOAN GUARANTEE APPLICATION.—

(1) Upon receiving an application for a loan guarantee for an eligible export vessel, the Secretary shall promptly provide to the Secretary of Defense notice of the receipt of the application. During the 30-day period beginning on the date on which the Secretary of Defense receives such notice, the Secretary of Defense may disapprove the loan guarantee based on the assessment of the Secretary of the potential use of the vessel in a manner that may cause harm to United States national security interests. The Secretary of Defense may not disapprove a loan guarantee under this section solely on the basis of the type of vessel to be constructed with the loan guarantee. The authority of the Secretary to disapprove a loan guarantee under this section may not be delegated to any official other than a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary of Transportation may not make a loan guarantee disapproved by the Secretary of Defense under paragraph (1).

[46 U.S.C. 1274a]

SEC. 1104B. FINANCING CONTRACT FOR CONSTRUCTION OR RECONSTRUCTION OF COMMERCIAL VESSEL; VESSEL REPLACEMENT GUARANTEE FUND.

(a) Notwithstanding the provisions of this title [46 U.S.C. App. 1271 et seq.], except as provided in subsection (d) of this section, the Secretary, upon the terms the Secretary may prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing and refinancing, including reimbursement to an obligor for expenditures previously made, of a contract for construction or reconstruction of a vessel or vessels [owned by citizens of the United States] which are designed and to be employed for commercial use in the coastwise or intercoastal trade or in foreign trade as defined in section 905 of this Act [46 U.S.C. App. 1244] if—

(1) the construction or reconstruction by an applicant is made necessary to replace vessels the continued operation of which is denied by virtue of the imposition of a statutorily mandated change in standards for the operation of vessels, and

where, as a matter of law, the applicant would otherwise be denied the right to continue operating vessels in the trades in which the applicant operated prior to the taking effect of the statutory or regulatory change;

(2) the applicant is presently engaged in transporting cargoes in vessels of the type and class that will be constructed or reconstructed under this section, and agrees to employ vessels constructed or reconstructed under this section as replacements only for vessels made obsolete by changes in operating standards imposed by statute;

(3) the capacity of the vessels to be constructed or reconstructed under this title will not increase the cargo carrying capacity of the vessels being replaced;

(4) the Secretary has not made a determination that the market demand for the vessel over its useful life will diminish so as to make the granting of the guarantee fiduciarily imprudent; and

(5) the Secretary has considered the provisions of section 1104A(d)(1)(A)(iii), (iv), and (v) of this title [46 U.S.C. App. 1274(d)(1)(A)(iii)–(v)].

(b) For the purposes of this section—

(1) the maximum term for obligations guaranteed under this program may not exceed 25 years;

(2) obligations guaranteed may not exceed 87½ percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel; and

(3) reconstruction cost obligations may not be guaranteed unless the vessel after reconstruction will have a useful life of at least 15 years.

The Secretary may not by rule, regulation, or procedure establish any percentage within the 87½ percent or less limitation in paragraph (2) that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section.

(c)(1) The Secretary shall by rule require that the applicant provide adequate security against default. The Secretary may, in addition to any fees assessed under section 1104A(e) [46 U.S.C. App. 1274(e)], establish a Vessel Replacement Guarantee Fund into which shall be paid by obligors under this section—

(A) annual fees which may be an additional amount on the loan guarantee fee in section 1104A(e) [46 U.S.C. App. 1274(e)] not to exceed an additional 1 percent; or

(B) fees based on the amount of the obligation versus the percentage of the obligor's fleet being replaced by vessels constructed or reconstructed under this section.

(2) The Vessel Replacement Guarantee Fund shall be a subaccount in the Federal Ship Financing Fund, and shall—

(A) be the depository for all moneys received by the Secretary under sections 1101 through 1107 of this title with respect to guarantee or commitments to guarantee made under this section;

(B) not include investigation fees payable under section 1104A(f) [46 U.S.C. App. 1274(f)] which shall be paid to the Federal Ship Financing Fund; and

(C) be the depository, whenever there shall be outstanding any notes or obligations issued by the Secretary under section 1105(d) [46 U.S.C. App. 1275(d)] with respect to the Vessel Replacement Guarantee Fund, for all moneys received by the Secretary under sections 1101 through 1107 from applicants under this section.

(d) The program created by this section shall, in addition to the requirements of this section, be subject to the provisions of sections 1101 through 1103; 1104A(b)(1), (4), (5), (6); 1104A(e); 1104A(f); 1104A(h); and 1105 through 1107 [46 U.S.C. App. 1271–1273, 1274(b)(1), (4)–(6), (e), (f), (h), 1275]; except that the Federal Ship Financing Fund is not liable for any guarantees or commitments to guarantee issued under this section.

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[46 U.S.C. App. 1279C]

SEC. 1110. OCEAN THERMAL ENERGY CONVERSION DEMONSTRATION FACILITIES AND PLANTSHIPS.

(a) FINANCING OF CONSTRUCTION, RECONSTRUCTION, OR RECONDITIONING.—Pursuant to the authority granted under section 1103(a) of this title [46 U.S.C. App. 1273], the Secretary, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship **[**owned by citizens of the United States**]**. Guarantees or commitments to guarantee under this subsection shall be subject to all the provisos, requirements, regulations, and procedures which apply to guarantees or commitments to guarantee made pursuant to section 1104(a)(1) of this title, [46 U.S.C. App. 1274(a)(1)], except that—

(1) no guarantees or commitments to guarantee may be made by the Secretary under this subsection before October 1, 1981;

(2) the provisions of subsection (d) of section 1104 of this title [46 U.S.C. App. 1274(d)]shall apply to guarantees or commitments to guarantee for that portion of a commercial demonstration ocean thermal energy conversion facility or plantship not to be supported with appropriated Federal funds;

(3) guarantees or commitments to guarantee made pursuant to this section may be in an aggregate principal amount which does not exceed 87½ percent of the actual cost or depreciated actual cost of the commercial demonstration ocean thermal energy conversion facility or plantship: Provided, That, if the commercial demonstration ocean thermal energy conversion facility or plantship is supported with appropriated Federal funds, such guarantees or commitments to guarantee may not exceed 87½ percent of the aggregate principal amount of that portion of the actual cost or depreciated actual cost for which the obligor has an obligation to secure financing in accordance with the terms of the agreement between the obligor and the Department of Energy or other Federal agency; and

(4) the provisions of this section may be used to guarantee obligations for a total of not more than 5 separate commercial demonstration ocean thermal energy conversion facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) CERTIFICATION OF REASONABLENESS OF RISK.—A guarantee or commitment to guarantee shall not be made under this section unless the Secretary of Energy, in consultation with the Secretary, certifies to the Secretary that, for the ocean thermal energy conversion facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the Federal Government to a level which is reasonable. The Secretary of Energy must base his considerations on the following: (1) the successful demonstration of the technology to be used in such facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and (2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of such facility or plantship.

(c) OTEC DEMONSTRATION FUND.—A special subaccount in the Federal Ship Financing Fund, to be known as the OTEC Demonstration Fund, shall be established on October 1, 1981. The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section which do not qualify under other sections of this title [46 U.S.C. App. 1271 et seq.]. Except as specified otherwise in this section, the operation of the OTEC Demonstration Fund shall be identical with that of the parent Federal Ship Financing Fund: except that, notwithstanding the provisions of section 1104(g) [46 U.S.C. App. 1274(g)], (1) all moneys received by the Secretary pursuant to sections 1101 through 1107 of this title [46 U.S.C. App. 1271–1279] with respect to guarantees or commitments to guarantee made pursuant to this section shall be deposited only in the OTEC Demonstration Fund, and (2) whenever there shall be outstanding any notes or other obligations issued by the Secretary pursuant to section 1105(d) of this title [46 U.S.C. App. 1275(d)] with respect to the OTEC Demonstration Fund, all moneys received by the Secretary pursuant to sections 1101 through 1107 of this title [46 U.S.C. App. 1271–1279] with respect to ocean thermal energy conversional facilities or plantships shall be deposited in the OTEC Demonstration Fund. Assets in the OTEC Demonstration Fund may at any time be transferred to the parent fund whenever and to the extent that the balance thereof exceeds the total guarantees or commitments to guarantee made pursuant to this section then outstanding, plus any notes or other obligations issued by the Secretary pursuant to section 1105(d) of this title [46 U.S.C. App. 1275(d)] with respect to the OTEC Demonstration Fund. The Federal Ship Financing Fund shall not be liable for any guarantees or commitments to guarantee issued pursuant to this section. The aggregate unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time shall not exceed $1,650,000,000.

(d) NOTES AND OBLIGATIONS.—The provisions of section 1105(d) of this title [46 U.S.C. App. 1275(d)] shall apply specifically to the OTEC Demonstration Fund as well as to the Fund: Provided, however, That any notes or obligations issued by the Secretary pursuant to section 1105(d) of this title [46 U.S.C. App. 1275(d)] with respect to the OTEC Demonstration Fund shall be payable solely from proceeds realized by the OTEC Demonstration Fund.

(e) TAXABILITY OF INTEREST.—The interest on any obligation guaranteed under this section shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1954 [26 U.S.C. 1 et seq.].

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[46 U.S.C. App. 1294]

SEC. 1214. EXPIRATION OF AUTHORITY TO PROVIDE INSURANCE.

The authority of the Secretary to provide insurance and reinsurance under this title shall expire [June 30, 1995] *June 30, 2000.*

TITLE 49, TRANSPORTATION

Subtitle I—Department of Transportation

CHAPTER 3. GENERAL DUTIES AND POWERS

Subchapter I—Duties of the Secretary of Transportation

§ 308. Reports

(a) As soon as practicable after the end of each fiscal year, the Secretary of Transportation shall report to the President, for submission to Congress, on the activities of the Department of Transportation during the prior fiscal year.

(b) The Secretary shall submit to the President and Congress each year a report on the aviation activities of the Department. The report shall include—

(1) collected information the Secretary considers valuable in deciding questions about—

(A) the development and regulation of civil aeronautics;

(B) the use of airspace of the United States; and

(C) the improvement of the air navigation and traffic control system; and

(2) recommendations for additional legislation and other action the Secretary considers necessary.

(c) The Secretary shall submit to Congress each *even-numbered* year a report on the conditions of the public ports of the United States, including the—

(1) economic and technological development of the ports;

(2) extent to which the ports contribute to the national welfare and security; and

(3) factors that may impede the continued development of the ports.

(d) By the 90th day after the end of each fiscal year, the Secretary shall submit to Congress a report listing the specific assistance provided by the United States Government to the railroad industry during that fiscal year. The report shall include—

(1) the reasons for each Government loan or grant and explain the way in which the loan or grant contributed to the overall goal of providing a safe and efficient transportation system;

(2) information on the financial condition of each railroad having a loan guaranteed under the Emergency Rail Services Act of 1970 (45 U.S.C. 661 et seq.) throughout the duration of the loan; and

(3) information on the past and anticipated financial condition and operations during the fiscal year of the Railroad Rehabilitation and Improvement Fund established under section 502(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(a)) and of the Obligation Guarantee Fund established under section 511(b) of that Act (45 U.S.C. 831(b)).

(e)(1) The Secretary shall submit a report to Congress in January of each even-numbered year of estimates by the Secretary on the current performance and condition of public mass transportation systems with recommendations for necessary administrative or legislative changes.

(2) In reporting to Congress under this subsection, the Secretary shall prepare a complete assessment of public transportation facilities in the United States. The Secretary also shall assess future needs for those facilities and estimate future capital requirements and operation and maintenance requirements for one-year, 5-year, and 10-year periods at specified levels of service.

MERCHANT SHIP SALES ACT Of 1946

[50 U.S.C. App. 1744]

SEC. 11. NATIONAL DEFENSE RESERVE FLEET.

(a) The Secretary of Transportation shall maintain a National Defense Reserve Fleet, including any vessel assigned by the Secretary to the Ready Reserve Force component of the fleet, consisting of those vessels owned or acquired by the United States Government that the Secretary of Transportation, after consultation with the Secretary of the Navy, determines are of value for national defense purposes and that the Secretary of Transportation decides to place and maintain in the fleet.

(b) Except as otherwise provided by law, a vessel in the fleet may be used—

(1) for an account of an agency of the United States Government in a period during which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); or

(2) on the request of the [Secretary of the Navy] SECRETARY OF DEFENSE, and in accordance with memoranda of agreement between the Secretary of Transportation and the Secretary of Defense, for—

(A) testing for readiness and suitability for mission performance;

(B) defense sealift functions for which other sealift assets are not reasonably available; and

(C) support of the deployment of the United States armed forces in a military contingency, for military contingency operations, or for civil contingency operations upon orders from the National Command Authority;

(3) for otherwise lawfully permitted storage or transportation of non-defense-related cargo as directed by the Secretary of Transportation with the concurrence of the Secretary of Defense; or

(4) for training purposes to the extent authorized by the Secretary of Transportation with the concurrence of the Secretary of Defense.

(c) The Secretary of Transportation shall not require bid, payment, performance, payment and performance, or completion bonds from contractors for repair, alteration, or maintenance of vessels of the National Defense Reserve Fleet unless—

(1) required by law; or

(2) the Secretary determines, after investigation, that the imposition of such bonding requirements would not preclude any responsible potential bidder or offeror from competing for award of the contract.

(d) READY RESERVE FORCE MANAGEMENT.—

(1) MINIMUM REQUIREMENTS.—To ensure the readiness of vessels in the Ready Reserve Force component of the National Defense Reserve Fleet, the Secretary of Transportation shall, at a minimum—

(A) maintain all of the vessels in a manner that will enable each vessel to be activated within a period specified in plans for mobilization of the vessels;

(B) activate and conduct sea trials on each vessel at least once every twenty-four months;

(C) maintain in an enhanced activation status those vessels that are scheduled to be activated within 5 days;

(D) locate those vessels that are scheduled to be activated within 5 days near embarkation ports specified for those vessels; and

(E) notwithstanding section 2109 of title 46, United States Code, have each vessel inspected by the Secretary of the department in which the Coast Guard is operating to determine if the vessel meets the safety standards that would apply under part B of subtitle II of that title [46 U.S.C. 3101 et seq.] if the vessel were not a public vessel.

(2) VESSEL MANAGERS.—

(A) ELIGIBILITY FOR CONTRACT.—A person, including a shipyard, is eligible for a contract for the management of a vessel in the Ready Reserve Force if the Secretary determines, at a minimum, that the person has—

(i) experience in the operation of commercial-type vessels or public vessels owned by the United States Government; and

(ii) the management capability necessary to operate, maintain, and activate the vessel at a reasonable price.

(B) CONTRACT REQUIREMENT.—The Secretary of Transportation shall include in each contract for the management of a vessel in the Ready Reserve Force a requirement that each seaman who performs services on any vessel covered by the contract hold the license or merchant mariner's document that would be required under chapter 71 or chapter 73 of title 46, United States Code [46 U.S.C. 7101 et seq. or 7301 et seq.], for a seaman performing that service while operating the vessel if the vessel were not a public vessel.

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